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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed *literally in italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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States "to whom you will then owe whatever payment the Government made on your account".

(c) The usual publicity, as indicated in answer to Interrogatory No. 3(a), supra, was given to the issuance of Administrator's Decision 513, and any persons interested enough to inquire were advised.

Interrogatory No. 4

Did the Administrator of Veterans' Affairs, prior to October 6, 1942, make or issue any rules or regulations concerning the protection of private insurance under Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940? If so, please furnish copies of all such rules and regulations.

Answer to Interrogatory No. 4

On December 6, 1940, regulations, copy of which is appended hereto as an exhibit to this answer, were duly published by the Veterans Administration.

Interrogatory No. 5

Did the Veterans' Administration or any branch of the Armed Forces prepare and circulate to members of the Armed Forces, prior to October 6, 1942, any pamphlets or other written explanations of Article IV of said Soldiers' and Sailors' Civil Relief Act of 1940 (whether prepared and distributed pursuant to the provisions of Subdivision (2) of Section 401 of said Act, or otherwise)? If so, please furnish copies of all such informational material.

Answer to Interrogatory No. 5

Supplies of Veterans Administration Insurance

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In the District Court of the United States, Northern
District of California, Northern Division

No. 6326

PAUL E. PLESHA,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Plaintiff alleges:

I.

That this action arises under the act of October 8, 1940, sometimes known as the National Service Life Insurance Act of 1940, 54 Stat. 1008-1014, Title 38, U.S.C.A., Sections 801 to 818, as hereinafter more fully appears.

II.

That plaintiff resides in the City of Sacramento, County of Sacramento, State of California, which is within The Northern Division of the Northern District of California.

III.

That on or about the 1st day of May, 1942, defendant issued to plaintiff a policy of life insurance under and in accordance with said National Service Life Insurance Act, such policy being numbered N1927254 and being in the face amount of Ten Thousand Dollars (\$10,000.00); that said policy was maintained in full force and effect by payment of the premiums thereon to and including the 31st day

of October, 1945; that effective November 1, 1945, the face amount of said policy was reduced to Five Thousand Dollars (\$5,000.00); that said policy as so reduced, was maintained in full force and effect by the payment of premiums thereon to and including November 30, 1945.

IV.

That in accordance with Section 602(f) of said Act (38 U.S.C.A. Section 802f) and Regulations issued pursuant thereto by the Administrator of Veterans' Affairs, a special dividend was declared by said Administrator to be paid from the surplus in the National Service Life Insurance Fund to each holder of a policy issued under said Act prior to the year 1948 who should file claim for such dividend with said Administrator.

V.

That on or about the 1st day of September, 1949, plaintiff filed with said Administrator his claim, on the form provided by said Administrator for such purpose, for all moneys due to him on account of dividends or special dividends payable on his said policy of life insurance.

VI.

That upon filing his said claim Plaintiff became entitled to receive a special dividend on his said policy in the amount of Two Hundred Thirty-three Dollars Seventy-five Cents (\$233.75).

VII.

That on or about the 24th day of January, 1950,

plaintiff was notified by the said Administrator that plaintiff's claim for such dividends was approved in part and denied in part, that plaintiff's said claim was approved in the amount of Nine Dollars and Ninety-five Cents (\$9.95), and denied in the amount of Two Hundred Twenty-one Dollars and Five Cents (\$221.05); that on or about the 15th day of April, 1950, plaintiff was notified that his claim was approved in the additional amount of Two Dollars and Seventy-five Cents (\$2.75), but that his claim was still denied as to Two Hundred Twenty-one Dollars and Five Cents (\$221.05) thereof.

VIII.

That such denial of such portion of plaintiff's said claim was and is without legal cause or justification.

IX.

That there is a disagreement as to plaintiff's said claim within the meaning of Section 617 of said Act. (38 U.S.C.A. Section 817).

X.

That there is now due, owing and payable to plaintiff by defendant the sum of Two Hundred Twenty-one Dollars and Five Cents (\$221.05), with interest thereon from January 24, 1950 at the legal rate.

Wherefore, plaintiff demands judgment against defendant in the sum of Two Hundred Twenty-one Dollars and Five Cents (\$221.05), with interest

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thereon from January 24, 1950, and his costs of suit.

WHITE, HARBER & SCHEI,
/s/ By LAWRENCE A. SCHEI,
Attorneys for Plaintiff

Duly Verified.

[Endorsed]: Filed May 19, 1950.

[Title of District Court and Cause.]

ANSWER

Now comes the defendant and answering the complaint, denies and alleges as follows:

I.

That the complaint fails to state a claim against the defendant upon which relief can be granted.

II.

That the court is without jurisdiction to hear and determine the cause of action alleged herein since it is one for recovery of special dividends and not cognizable under Section 617 of the National Service Life Insurance Act of 1940, as amended (Section 817 of Title 38 U.S.C.A.).

III.

That there is no disagreement between the plaintiff and the Veterans Administration with respect to the special dividends payable under his policy

of National Service Life Insurance, which may be made the basis for the assumption by the court of jurisdiction of this suit under Section 817 of Title 38 U.S.C.A.

IV.

For answer to the allegations in the several paragraphs of the plaintiff's complaint, the defendant says:

I.

It is denied that this action is maintainable under Sections 801 to 818 of Title 38 U.S.C.A.

II.

The allegations of paragraph II are admitted.

III.

The allegations of paragraph III are admitted.

IV.

The allegations of paragraph IV are denied. As a further answer thereto, the defendant says that pursuant to the authorization contained in Section 602 (f) of the National Service Life Insurance Act, as amended (Section 802 (f) of Title 38 U.S.C.A.), the Administrator of Veterans Affairs, on January 16, 1950, officially declared and established the basis for computing the special dividends to be paid upon certain specified policies of National Service Life Insurance.

V.

The allegations of paragraph V are denied. Further answering, the defendant says that the plaintiff furnished to the Veterans Administration, on

the form provided therefor, all the information requested of him by the Veterans Administration as a basis for consideration of his entitlement to special dividends.

VI.

The allegations of paragraph VI are denied. Further answering, the defendant says that the Veterans Administration determined that the plaintiff's \$10,000 policy of National Service Life Insurance was entitled to participate in the special dividends to the extent of \$233.75, but that payment of the full amount of the said dividends could not lawfully be made because of the fact that the plaintiff was, at that time, indebted to the United States in the sum of \$221.05, as will more fully hereinafter appear; and further answering, the defendant says that checks in the amount of \$9.95 and \$2.75, respectively, were mailed to the plaintiff representing the full amount of the dividends payable to him after deducting the amount of the indebtedness he owed the United States.

VII.

The allegations of paragraph VII are denied. Further answering paragraph VII of the complaint, defendant denies that the plaintiff was notified on January 24, 1950, or any other date, that plaintiff's claim for dividends was approved in part and denied in part, but states the facts to be that the plaintiff was, on or about January 24, 1950, forwarded a dividend statement showing that dividends in the amount of \$231.00 had accrued under the plaintiff's National Service Life Insurance policy,

and that a charge had been entered against the amount payable as dividends in the sum of \$221.05, leaving a net balance of \$9.95 for which check was enclosed; that later, after ascertaining that the insured's policy had been reinstated in the amount of \$5,000 and maintained in effect during the month of November, 1945, defendant forwarded to the plaintiff an additional statement, accompanied by check in the amount of \$2.75, covering additional dividends payable; and further answering paragraph VII, defendant says that the sum of \$221.05, which was shown on said statement as a charge against dividends payable under the insurance, arose in this manner: On March 5, 1941, two days subsequent to the plaintiff's entry into the service, he made application in writing to the Veterans Administration for the protection of policy No. 419814 issued upon the life of the plaintiff by the California-Western States Life Insurance Company December 6, 1940, in the face amount of \$2500, as provided by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1183-86); that the Veterans Administration processed said application in all respects as provided by law and the regulations issued pursuant thereto by the Administrator of Veterans Affairs, and that the said application was approved and both the insurer and the plaintiff so notified on or about June 20, 1941.

That thereupon the defendant guaranteed the payment to the insurer, California-Western States Life Insurance Company, of such premiums as were not paid by the insured during the period of cover-

age which extended from the date of application until one year after termination of the plaintiff's military service; that on October 6, 1942, Public Law 732, 77th Congress, was approved by the President, and pursuant thereto the period of coverage and protection afforded commercial insurance policies under the Soldiers' and Sailors' Civil Relief Act of 1940 was extended to include the period terminating two years subsequent to discharge of an insured from service.

That upon learning of the separation of the plaintiff from military service, as of October 20, 1945, the Veterans Administration on November 14, 1946, dispatched to him a letter (V. A. Form F.L. 9-63), photostatic copy of which is incorporated herein by reference, wherein the insured's right to terminate the protection being afforded his insurance was made clear; that he was further advised in the said letter that any premiums not paid by him covering the period of protection would, upon an accounting, become an indebtedness which he would owe the insurance company, subject to any credit allowed by the company for the then cash value of the policy; that the Government guaranteed the payment of this amount to the insurance company and that any amount not paid by him to the insurer would be paid by the United States "to whom you will then owe whatever payment the Government made on your account"; that on October 20, 1947, the Veterans Administration terminated the protection, as provided by law, and thereupon the California-Western States Life Insurance Company

rendered its report showing that premiums had accrued during the period of coverage in the amount of \$343.93, no part of which had been paid, and that after crediting the cash surrender value of the policy (\$82.88) an unpaid balance of \$261.05 remained which was subject to payment by the Government; that after the customary audit of the insurer's account, the Veterans Administration approved an award in its favor in the amount of \$261.05, in payment of which United States Treasury Check No. 59 311 294, dated January 2, 1948, was dispatched.

That the plaintiff was duly notified of the said award and payment to the insurer and that the amount paid by the United States represented a debt due by him to the Government; that on or about March 11, 1948, the insured advised the Veterans Administration that he was not in a position at that time to make payment and requested information as to what mode of payment he might avail himself of "in order to take care of this obligation"; that after further exchange of correspondence the insured was advised on August 10, 1948, that he could discharge this obligation by initially making payments of \$10.00 per month, the payments to be increased as his financial condition improved "in order to liquidate the entire indebtedness within the allotted time of approximately one year"; that the plaintiff accepted said plan of repayment and transmitted pursuant thereto the sum of \$10.00 covering payment for the month of August, 1948, \$10.00 covering payment for the month

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of September, 1948, and on December 28, 1948, he transmitted the sum of \$20.00, covering November and December, 1948, payments; that plaintiff made no further payments thereafter, and on February 17, 1950, the insured was notified that a deduction in the amount of \$221.05 had been made from his National Service Life Insurance dividends and that his indebtedness to the United States because of protection afforded his commercial life insurance policy under the Soldiers' and Sailors' Civil Relief Act was thereby liquidated.

Further answering, the defendant says that all of its actions aforesaid, and particularly the application of the sum of \$221.05 payable to the plaintiff as special dividends under his National Service Life Insurance policy to the plaintiff's indebtedness to the United States in like amount for the protection afforded, at plaintiff's request, under the Soldiers' and Sailors' Civil Relief Act of 1940, and amendments thereto, was fully authorized by law, and that it owes the plaintiff nothing.

VIII.

The allegations of paragraph VIII are denied.

IX.

The allegations of paragraph IX are denied.

X.

The allegations of paragraph X are denied. In further answer thereto, the defendant says that it has fully discharged its obligation to the plaintiff with respect to the special dividends payable under

his policy of National Service Life Insurance and has fully paid to him all dividends to which he was lawfully entitled.

Wherefore, having fully answered, the defendant prays that the plaintiff take nothing by this action and that judgment be entered for the defendant and against the plaintiff with costs, and for such other and further relief as may to the court seem just and proper.

/s/ FRANK J. HENNESSY,

/s/ ~~By~~ R. B. McMILLAN,

Assistant United States Attorney, Attorney for Defendant, United States of America.

[Endorsed]: Filed January 8, 1951.

[Title of District Court and Cause.]

**WRITTEN INTERROGATORY SUBMITTED
UNDER RULE 33, RULES OF CIVIL PRO-
CEDURE, AND ANSWERS THERETO**

To United States of America, Defendant, and to
Frank J. Hennessy, United States Attorney,
Its Attorney:

In accordance with Rule 33 of the Rules of Civil Procedure, you are hereby requested to furnish answers to the following interrogatories:

Interrogatory No. 1

(a) Did the United States Veterans' Administration, at any time prior to October 6, 1942, issue any official statement that persons whose policies of

private life insurance had been placed under the protection of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public No. 861, 76th Congress) prior to October 6, 1942, would be or become liable to the Government in the event the United States was required to pay moneys to the insurer on account of the guarantee of premiums by the United States under such Act?

(b) If any such statements were made, please advise where and to whom such statements were made, and what efforts were made to circulate such statements to interested persons, and particularly to persons who had placed their policies under the protection of Article IV. In addition, please furnish copies of all such statements.

Answer to Interrogatory No. 1

(a) No, the Veterans Administration did not issue any categorical official statement prior to October 6, 1942, that persons whose policies of private life insurance had been placed under the protection of Article IV, Soldiers' and Sailors' Civil Relief Act of 1940, would be or become liable to the Government in the event the United States was required to make payment to insurers on account of the guaranty of premiums by the United States under such Act.

(b) Answer unnecessary. See 1(a) above.

Interrogatory No. 2

When, where and under what circumstances did the Veterans' Administration first publicly and of-

ficially state that it considered that such persons would become indebted to the United States if the United States was required to make good on its guarantee of premiums on insurance which such persons had placed under the protection of said Act?

Answer to Interrogatory No. 2

So far as can be ascertained by inquiry of officials having knowledge of the facts, the first public and official statements made with regard to Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 were probably made at hearings conducted by the Congress in connection with amendments thereto, later passed as a part of Public Law 732, 77th Congress, on October 6, 1942.

Interrogatory No. 3

(a) What circulation was given to Decision No. 513 (of the Administrator of Veterans' Affairs) dated March 1, 1943?

(b) What efforts, if any, were made to advise persons who, prior to October 6, 1942, had placed policies of life insurance under the protection of said Act of the contents of said Administrator's Decision?

(c) What publicity if any was given to the issuance of said Administrator's Decision?

Answer to Interrogatory No. 3

(a) Administrator's Decision No. 513 was given the usual distribution prescribed for such decisions, viz., to all Veterans Administration Regional Offices,

hospitals, facilities and other installations where they will serve a useful purpose. In addition, they are available in bound form from the Superintendent of Documents, United States Government Printing Office.

(b) As soon as the Veterans Administration was advised by a service department of the separation or discharge of a person who had, prior to October 6, 1942, placed his private insurance under the protection of said Act, he was fully advised, among other things, as was the plaintiff in this case on November 14, 1946, that all premiums becoming due and not paid during the period of protection constituted a loan against the policy; and that on this indebtedness he was to pay interest at the policy loan rate of the company; that his policy might be left under the protection of the Act for a maximum period of two years from discharge (this was pursuant to Article IV as amended by the Act of October 6, 1942) during which time he might repay any part of his loan as well as any premiums due and that at the end of this two-year period his protection would cease and an accounting would be made; that it was his privilege to have the policy withdrawn from protection then or at any future time within the two-year period, and that upon such accounting he would owe the insurance company the difference between the premium loan and the then cash value of the policy. He was also advised at such time that the Government guaranteed this difference to the insurance company, and that any part of it left unpaid would be paid by the United

(Civil Relief) Forms No. 380 and 385 were sent to the armed forces, and identical letters were written by the Administrator to the Secretary of War and to the Secretary of the Navy in effectuation of Congressional mandates contained in the basic Act (P L 861-76 C.). A copy of Veterans Administration Insurance (Civil Relief) Form No. 380 pertinent to this case is contained in Veterans Administration files now in custody of the United States Attorney. Copies of Form 385 and of letter of November 4, 1940, to the Secretary of War are attached.

Interrogatory No. 6

Did the Veterans' Administration or any official thereof charged with the administration of the benefits of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, prior to October 6, 1942, make any statements to the press concerning the rights of the Government and the obligations of servicemen who might take advantage of said Article IV in the event such servicemen did not pay premiums guaranteed by the Government? If so, please furnish copies of all such statements.

Answer to Interrogatory No. 6

Since press releases are not considered permanent records, no provision is made for their retention over a period of time such as here involved, and there is no record in the Veterans Administration of any statements to the press concerning the rights of the Government and the obligations of servicemen under Article IV of Public 861, 76th Congress.

Interrogatory No. 7

Did Mr. Harold W. Breining, then Assistant Administrator of Veterans' Affairs in charge of matters relating to insurance, make the statements attributed to him in the January 31, 1941, issue of "The Eastern Underwriter" (published at New York City, New York) and if so, did he not make such statements in view of their probable publication in such weekly insurance newspaper?

Answer to Interrogatory No. 7

The statement attributed to Mr. Harold W. Breining by the Eastern Underwriter was furnished by him at the request of the Managing Editor of that publication for comment on a news item concerning the Act. Mr. Breining, being a layman, necessarily confined his comments to the provisions of the original Act, and did not undertake to define the legal responsibilities of the parties thereunder.

Interrogatory No. 8

(a) Did the Veterans' Administration receive a letter dated February 18, 1941, from one Ray S. Beters, Manager of the Denver, Colorado office of the Jefferson Standard Life Insurance Company, which letter was directed to one H. L. McCoy, Director of Insurance, Veterans' Administration, Washington, D. C., and which letter related to the rights and obligations of a serviceman whose private insurance had been put under the protection of Article IV of said Act? If so, please furnish a copy of said letter.

(b) Did Mr. McCoy reply to said letter under

date of February 21, 1941, (file reference, FBE)? If so, please furnish a copy of such reply.

(c). Was the position of the Veterans' Administration relative to the possible indebtedness of the serviceman to the Government under the circumstances set forth in such correspondence then different from or contrary to that indicated in Mr. McCoy's said letter of February 21, 1941? If so, what was the position of the Veterans' Administration on the subject matter at that time?

Answer to Interrogatory No. 8

(a) Yes, the Veterans Administration received a letter under date of February 18, 1941, from one Ray S. Peters, then Manager of the Denver, Colorado Office of the Jefferson Standard Life Insurance Company, but the defendant is not at liberty to divulge the nature of such correspondence, even if it were pertinent to the issues in this case.

(b) Yes, Mr. McCoy apparently replied to Mr. Peters' letter, but the defendant is not at liberty to disclose the reply made, which is, of course, irrelevant to this case.

(c) No, the Veterans Administration has always been aware of the fact that Public 861, 76th Congress, did not in express terms provide that an applicant for protection would be indebted to the United States to the extent of any payments made by it on his account and pursuant to its terms; and it has always been the consistent position of the Veterans Administration and all responsible officials that it was not the intention of Congress in

enacting Public 861, 76th Congress, to provide free private insurance for servicemen, but that on the other hand, it was the intention of Congress to provide assistance to a serviceman in meeting obligations assumed during civilian life and prior to entry into the service where his entry into the service might render it difficult, if not impossible, to carry.

Interrogatory No. 9

What individual or individuals in the Veterans' Administration were responsible for the preparation of Veterans' Administration Insurance Forms 380, 381, 385 and 394 under the original Act of 1940?

Answer to Interrogatory No. 9

The Assistant Administrator for Insurance had immediate responsibility for the preparation of necessary forms for implementing Public 861, 76th Congress, to the Administrator of Veterans Affairs, who had ultimate responsibility for the preparation of such forms.

Interrogatory No. 10

(a) Did such person or persons responsible for the preparation of such forms understand at the time such forms were prepared that it was the position of the Veterans' Administration that a serviceman applying for protection under the Act who later allowed his policy to lapse would become indebted to the Government in the amount of moneys paid out by the Government to the insurer?

(b) If it was the position of the Veterans' Administration at that time that such servicemen

would become so indebted, why was this position not expressed or explained in such forms?

Answer to Interrogatory No. 10

(a) Several persons participated in the preparation of forms referred to in Interrogatory No. 9, supra, but the understanding which each had with respect to the existence of an indebtedness on the part of a serviceman on whose account monies were paid out by the Government to an insurer can not be ascertained at this time, nor are such understandings considered to be pertinent to this case.

(b) In order to put into effect the provisions of Public 861, 76th Congress, it was necessary to hastily prepare the necessary forms and to take other measures essential for the administration of said Act. For this reason it was considered advisable to follow the language of the basic Act until its provisions had been clarified by amendatory legislation or judicial construction.

Interrogatory No. 11

(a) When Mr. Harold W. Breining made the statement attributed to him on lines 8 to 11 inclusive of page 9 of Decision No. 742 of the Administrator of Veterans' Affairs, dated April 1, 1947, to what did he refer when he was talking about "present construction of existing law"?

(b) What was the Veterans' Administration's "present construction of existing law" at that time relative to servicemen's indebtedness to the Government?

Answer to Interrogatory No. 11

(a) The first sentence quoted on lines 8 to 11, page 9, of Decision No. 742 of the Administrator of Veterans Affairs is correct. The second sentence obviously does not quote Mr. Breining correctly, since it contradicts the first sentence. The fact that the statement made by Mr. Breining was clearly understood by the members of the Committee is evidenced by the subsequent statement by Mr. Sparkman, also appearing on page 9, to the following effect:

"But the gentlemen should understand this, that the soldier is not relieved from the liability of paying premiums. The Government simply guarantees that they will be paid. * * *"

(b) The "construction of existing law" by the Veterans Administration was always as indicated in answer to Interrogatory No. 8(c), *supra*.

* * * * *

Interrogatory No. 15

Please furnish a copy of the letter written to the President of the Senate of the United States on April 16, 1941, by Veterans' Administrator, Frank T. Hines, relative to proposed amendments to the Soldiers' and Sailors' Civil Relief Act of 1940.

Answer to Interrogatory No. 15

A copy of the letter written to the President of the Senate on April 16, 1941, by Veterans Administrator Frank T. Hines, relative to proposed amendments to the Soldiers' and Sailors' Civil Relief Act

of 1940, is reproduced in Senate Report No. 716 appended hereto as an exhibit.

Interrogatory No. 16

Please furnish a copy of the proposed amendments to the Soldiers' and Sailors' Civil Relief Act of 1940 which were prepared by the Veterans' Administration in 1941 (reference to such proposed amendments is made on page 6 of said Administrator's Decision No. 742).

Answer to Interrogatory No. 16

Amendments proposed by the Veterans Administration to Article IV of Public 861, 76th Congress, are set forth in Senate Report No. 716, referred to in answer to Interrogatory No. 15, supra.

Interrogatory No. 17

On page 5 of said Administrator's Decision No. 742 reference is made to a list of 14 cases in which the Government made collections from veterans on account of moneys paid out by the Government under the Act of March 8, 1918 (Public No. 103, 65th Congress). Please furnish us with a copy of such list, together with the last known addresses of such 14 veterans.

Answer to Interrogatory No. 17

The names of the 14 veterans from whom the Government made collections, referred to on page 5 of Administrator's Decision No. 742, are not available, and cannot reasonably be obtained within the time required to answer these interrogatories.

(Appropriate objection should be made to full answer.)

Interrogatory No. 13

(a) Were the payments made to the Government in such 14 cases voluntary on the part of the veterans, or were they the result of collection efforts on the part of the Government?

(b) If they were the result of collection efforts, please advise of the steps taken by the Government to effectuate such collections.

(c) Were any of said collections made by way of offset or deduction from benefits payable to such veterans under any law relating to veterans?

Answer to Interrogatory No. 18

(a) The information requested by this interrogatory is not presently available, nor can it reasonably be obtained within the time required for answer to these interrogatories.

(b) The information requested by this interrogatory is not presently available, nor can it reasonably be obtained within the time required for answer to these interrogatories.

(c) The information requested by this interrogatory is not presently available, nor can it reasonably be obtained within the time required for answer to these interrogatories.

(Appropriate objection should be made to full answer.)

Interrogatory No. 19

Did the Government make any attempts to obtain reimbursement for amounts collected under the 1918

Act from any persons other than the 14 veterans mentioned in said Administrator's Decision No. 742? If so, what was the nature and extent of such efforts?

Answer to Interrogatory No. 19

The information requested by this interrogatory is not presently available, nor can it reasonably be obtained within the time required for answer to these interrogatories.

(Appropriate objection should be made to full answer.)

Interrogatory No. 20

Did the Veterans' Administration or any representative thereof advise the Congress or any committee of the House or Senate at the time the Soldiers' and Sailors' Civil Relief Act of October 17, 1940, was under consideration that such collections had been made under the 1918 Act and that similar collections would be attempted under the 1940 Act?

Answer to Interrogatory No. 20

So far as can be ascertained, no hearings were held with respect to Public 861, 76th Congress, and no representative of the Veterans Administration appeared before Congress with reference thereto prior to its passage on October 17, 1940.

* * * * *

Interrogatory No. 24

(a) Did the Veterans' Administration or any official thereof suggest the amendment of Article IV of the Soldiers' and Sailors' Civil Relief Act to include the provision relative to offset or deduction

which was ultimately included in Section 406 of the Act of October 6, 1942, (Public No. 732, 77th Congress) ?

(b) What was the purpose of such amendment so far as it related to the Government's right to collect by way of offset or deduction ?

(c) Was the purpose or effect of such amendment so far as it related to the offset question discussed by or with any Committee of the House or Senate or in the House or Senate when the amendment was pending before Congress? If so, please furnish copies of any report of such discussion or furnish citations to the Congressional Record.

Answer to Interrogatory No. 24

(a) The amendments proposed by the Veterans Administration are set forth in the Senate Report No. 716 referred to in answer to Interrogatories 15 and 16, supra.

(b) The purpose of the amendment proposed by the Veterans Administration to Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 was to state in simple language which could be understood by anyone the obligation of the serviceman to reimburse the Government for amounts expended on his account and at his request in payment of premiums which he elected not to pay and which were guaranteed by the Government. This amendment was considered necessary in order to clarify the obligation of the serviceman which was clearly implied in Article IV as originally enacted, but was not expressly stated.

(c) The Committee hearings held in connection with the amendment of October 6, 1942, speak for themselves and are equally available to the plaintiff.

* * * * *

[Printer's Note: Interrogatories signed by Lawrence A Schei, of White, Harber & Schei, Attorneys for Plaintiff.]

[Printer's Note: Answers to Interrogatories signed by R. B. McMillan, Asst. U. S. Atty., for Chauncey Tramutolo, U. S. Attorney.]

[Endorsed]: Interrogatories Filed Feb. 12, 1951.

In the District Court of the United States, Northern District of California, Northern Division

No. 6326

PAUL E. PLESHA, Plaintiff,
vs.

UNITED STATES OF AMERICA, Defendant.

MYRON L. KERN, Plaintiff in Intervention,

vs.

UNITED STATES OF AMERICA, Defendant.

COMPLAINT IN INTERVENTION

Intervener alleges:

I.

That this action arises under the Act of October 8, 1940, sometimes known as the National Service Life Insurance Act of 1940, 54 Stat. 1008-1014,

Title 38, U.S.C.A., Sections 801 to 818, as hereinafter more fully appears.

II.

That intervener resides in the City and County of San Francisco, State of California, which is within The Northern District of California.

III.

That on or about the 1st day of February, 1942, defendant issued to intervener a policy of life insurance under and in accordance with said National Service Life Insurance Act, such policy being No. N-938 477 and being in the face amount of Ten Thousand Dollars (\$10,000.00); that said policy has been maintained in full force and effect at all times since February 1, 1942, to and including the date hereof by full payment of all premiums due thereon.

IV.

That in accordance with Section 602(f) of said Act (38 U.S.C.A. Section 802f) and Regulations issued pursuant thereto by the Administrator of Veterans' Affairs, a special dividend was declared by said Administrator to be paid from the surplus in the National Service Life Insurance Fund to each holder of a policy issued under said Act prior to the year 1948 who should file claim for such dividend with said Administrator.

V.

That on or about the 12th day of September,

1949, intervener filed with said Administrator his claim, on the form provided by said Administrator for such purpose, for all moneys due to him on account of dividends or special dividends payable on his said policy of life insurance.

VI.

That upon filing his said claim Intervener became entitled to receive a special dividend on his said policy in the amount of Three Hundred Ninety-six Dollars (\$396.00).

VII.

That on or about the 7th day of April, 1950, intervener was notified by the said Administrator that intervener's claim for such dividends was approved in part and denied in part, that intervener's said claim was approved in the amount of Ninety-three Dollars Ninety-four Cents (\$93.94) and denied in the amount of Three Hundred Two Dollars Six Cents (\$302.06).

VIII.

That such denial of such portion of intervener's said claim was and is without legal cause or justification.

IX.

That there is a disagreement as to intervener's said claim within the meaning of Section 617 of said Act. (38 U.S.C.A. Section 817.)

X.

That there is now due, owing and payable to intervener by defendant the sum of Three Hundred

Two Dollars Six Cents (\$302.06), with interest thereon from April 7, 1950, at the legal rate.

Wherefore, intervenor demands judgment against defendant in the sum of Three Hundred Two Dollars Six Cents (\$302.06), with interest thereon from April 7, 1950, and his costs of suit.

WHITE, HARBER & SCHEI,
/s/ By LAWRENCE A. SCHEI,
Attorneys for Intervener

Duly Verified.

[Endorsed]: Filed February 19, 1951.

In the District Court of the United States, Northern District of California, Northern Division

No. 6326

PAUL E. PLESHA,

Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

JAMES E. MABBUTT, Plaintiff in Intervention,

vs.

UNITED STATES OF AMERICA, Defendant.

COMPLAINT IN INTERVENTION

Intervener alleges:

I.

That this action arises under the Act of October 8, 1940, sometimes known as the National Service Life Insurance Act of 1940, 54 Stat. 1008-1014,

Title 38, U.S.C.A., Sections 801 to 818, as hereinafter more fully appears.

II.

That intervener resides in the City of Sacramento, County of Sacramento, State of California, which is within the Northern Division of the Northern District of California.

III.

That on or about the 6th day of October, 1942, defendant issued to intervener a policy of life insurance under and in accordance with said National Service Life Insurance Act, such policy being No. N 6163632 and being in the face amount of Ten Thousand Dollars (\$10,000.00); that said policy was maintained in full force and effect by payment of the premiums thereon to and including the 6th day of February, 1948; that effective February 6, 1948, said policy was converted to a 30-pay life insurance policy No. V 12071952; that said policy as converted has been maintained in full force and effect at all times since February 6, 1948.

IV.

That in accordance with Section 602(f) of said Act (38 U.S.C.A. Section 802f) and Regulations issued pursuant thereto by the Administrator of Veterans' Affairs, a special dividend was declared by said Administrator to be paid from the surplus in the National Service Life Insurance Fund to each holder of a policy issued under said Act prior

to the year 1948 who should file claim for such dividend with said Administrator.

V.

That on or about the 1st day of September, 1949, intervener filed with said Administrator his claim, on the form provided by said Administrator for such purpose, for all moneys due to him on account of dividends or special dividends payable on his said policy of life insurance.

VI.

That upon filing his said claim Intervener became entitled to receive a special dividend on his said policy in the amount of Three Hundred Fifty-two Dollars (\$352.00).

VII.

That on or about the 26th day of May, 1950, intervener was notified by the said Administrator that intervener's claim for such dividends was approved in part and denied in part, that intervener's said claim was approved in the amount of One Hundred Forty-six Dollars Twenty-five Cents (\$146.25) and denied in the amount of Two Hundred Five Dollars Seventy-five Cents (\$205.75).

VIII.

That such denial of such portion of intervener's said claim was and is without legal cause or justification.

IX.

That there is a disagreement as to intervener's

said claim within the meaning of Section 617 of said Act. (38 U.S.C.A. Section 817.)

X.

That there is now due, owing and payable to intervenor by defendant the sum of Two Hundred Five Dollars Seventy-five Cents (\$205.75), with interest thereon from May 26, 1950, at the legal rate.

Wherefore, intervenor demands judgment against defendant in the sum of Two Hundred Five Dollars Seventy-five Cents (\$205.75), with interest thereon from May 26, 1950, and his costs of suit.

WHITE, HARBER & SCHEL,
/s/ By **LAWRENCE A. SCHEL,**
Attorneys for Intervener

Duly Verified.

[Endorsed]: Filed February 19, 1951.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS

Plaintiff, Paul E. Plesha, hereby requests defendant, United States of America, within thirty (30) days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

That each of the following statements is true:

1. That Paul E. Plesha on March 5, 1941, com-

pleted and signed an application on Veterans' Administration insurance Form 380 to have placed under the protection of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 that certain life insurance policy issued on the life of Paul E. Plesha by the California Western States Life Insurance Company on December 6, 1940, Policy No. 419814.

2. That under date of March 12, 1941, the insurer which had issued the aforementioned policy of life insurance to plaintiff Paul E. Plesha, completed, signed and dispatched to the Veterans' Administration a "Report by Insurer", Veterans' Administration Insurance Form 381, which form related to said policy and to plaintiff's said application.

3. That under date of June 20, 1941, the Veterans' Administration notified Paul E. Plesha and said California Western States Life Insurance Company on Veterans' Administration Insurance Form 394-Rev. Mar. 41 that plaintiff's said application for such protection of his said policy had been approved.

4. That during the period March 6, 1941 to March 10, 1948 no additional applications, agreements, letters or other communications were made or sent by plaintiff to the Veterans' Administration relative to the protection of his said policy of life insurance under said Act.

5. That no additional notices, letters or other communications were sent by the Veterans' Administration to Paul E. Plesha relative to the protection

of said insurance under said Act during the period from June 21, 1941, to October 19, 1945.

6. That plaintiff's said application dated March 5, 1941, together with the said Report of Insurer dated March 12, 1941, said Notice of Approval dated June 20, 1941, and the original provisions of the Soldiers' and Sailors' Civil Relief Act of 1940—(Public No. 861, 76th Congress) constituted the entire agreement and contract between plaintiff and the United States concerning the protection of his said insurance under the said Act.

7. That in consideration of the protection afforded said insurance policy by the United States plaintiff consented and agreed "that the United States shall be protected in the amount of any premiums and interest guaranteed on the above-numbered policy in the event of its maturity as a claim, or out of the cash surrender of the policy, at the expiration of the period of the protection under the Act".

8. That plaintiff did not agree, orally or in writing, on or before January 2, 1948, that he would reimburse the United States in whole or in part for any moneys which the United States might be required to pay on account of its guarantee of premiums and interest on said policy of life insurance.

9. That plaintiff was not informed by the Veterans' Administration or any representative thereof prior to October 20, 1945, that the United States claimed or would claim reimbursement for any amount or amounts paid by it to said insurer on account of said policy of life insurance.

10. That the special dividend in the amount of Two Hundred Thirty-three Dollars Seventy-five Cents (\$233.75), which was payable on plaintiff's policy of National Service Life Insurance as stated in paragraphs VI and VII of defendant's Answer herein was an "insurance benefit" within the meaning of Section 445 of Title 38 United States Code Annotated.

11. That when plaintiff made application for such special dividend on his National Service Life Insurance as alleged in paragraph V of defendant's Answer herein, he became entitled, as a matter of right, to receive such dividend at such time and in such amount as might be determined in accordance with existing law, and rules and regulations of the Administrator of Veterans' Affairs.

12. That the Veterans' Administration could not, consistently with law, have refused to pay such special dividend to Paul E. Plesha while paying dividends computed on the same basis to other owners of National Service Life Insurance policies.

13. That the deduction of Two Hundred Twenty-one Dollars Five Cents (\$221.05) made by the United States from such special dividend to which plaintiff became entitled was a denial pro tanto of plaintiff's request that he be paid such special dividend.

14. That such deduction was made after it had been determined that Paul E. Plesha was entitled to a special dividend in the amount of Two Hundred Thirty-one Dollars (\$231.00) in accordance with applicable law, rules and regulations.

15. That prior to the time when plaintiff made application for such special dividend and prior to September 1, 1948, the Veterans' Administration had declared, by means of nation-wide publicity, that it intended to pay a special dividend to all holders of certain specified policies of Service Life Insurance, including plaintiff's policy of National Service Life Insurance.

WHITE, HARBER & SCHEL,
/s/ By LAWRENCE A. SCHEL,
Attorney for Plaintiff

Acknowledgment of Service attached.

[Endorsed]: Filed February 19, 1951.

[Title of District Court and Cause.]

**REPLY TO REQUEST FOR ADMISSION
OF FACTS**

State of California,
County of San Francisco—ss.

The United States of America, defendant in the above-entitled action, makes the following statement in response to the Request for Admissions served upon it by the plaintiff on February 12, 1951.

1. Defendant admits the truth of the matters set forth in Paragraphs 1, 2, 3, 4, 5; 7 and 9 of the aforesaid request.

2. Defendant denies the truth of the matters set

forth in Paragraphs 6, 11, 12, 13, 14 and 15 of the aforesaid request.

3. Defendant neither admits nor denies the truth of the matters set forth in Paragraphs 8 and 10 of the aforesaid request for the reason that they call for expressions in the nature of conclusions of law which are for ultimate determination by the court.

/s/ CHAUNCEY TRAMUTOLO,

United States Attorney

/s/ By R. B. McMILLAN,

(Jurat)

Asst. United States Attorney

Acknowledgment of Service attached.

[Endorsed]: Filed October 19, 1951.

[Title of District Court and Cause.]

REPLY TO REQUEST FOR ADMISSION
OF FACTS

State of California,

County of San Francisco—ss.

Now comes the defendant, the United States of America, and in response to plaintiff's Request for Additional Admissions, and subject to all pertinent objections which may be interposed upon the trial, says:

In answer to Request No. 16(a)—

It is true that the plaintiff took all necessary steps to procure payment by the Veterans Administration of the Special Dividend, payment of which

commenced on to-wit, January 16, 1950, and except for his indebtedness to the United States on account of premiums advanced by it as set forth in defendant's Answer, would have been entitled, insofar as the Veterans Administration is concerned, to receive the sum of \$221.05, in addition to \$12.70, instead of having the former amount paid by applying it to his alleged indebtedness to the United States.

In answer to Request for Admission 16(b)—

It is true that, except for his indebtedness to the United States arising under the circumstances set forth in defendant's Answer, the plaintiff would have been entitled to receive a total of \$233.75 on account of such Special Dividend. In other words, National Service Life Insurance policies which had been in effect for the same length of time as plaintiff's, and which were taken out at the same insurance age on the Five-Year Level Premium Term plan, would have participated in the surplus available for distribution as special dividends to the extent of \$233.75, and the holders thereof would, if living on the date check in payment thereof was issued, have been entitled to receive such check in the absence of legal basis for refusing or withholding payment to the payee.

In answer to Request for Admission 17(a)—

It is admitted that plaintiff, prior to the filing of this suit, and on or about September 1, 1949, requested the Veterans Administration to make payment of Special Dividend on account of his National Service Life Insurance policy, which request of plaintiff the defendant complied with by apply-

ing the amount of \$221.05 to plaintiff's indebtedness to the Government, and by forwarding to the insured one check in the amount of \$9.95, and one check in the amount of \$2.75, as set forth in defendant's Answer.

In answer to Request for Admission 17(b)—

No, it is not true that the defendant, through the Veterans Administration and the Administrator of Veterans Affairs, has failed and refused to pay plaintiff more than the sum of \$12.70 on account of Special Dividend mentioned in defendant's Answer, for, as stated in Admission 17(a) above, the Veterans Administration paid said Dividend in full by applying \$221.05 thereof to his indebtedness to the United States, above referred to, and by issuing United States Treasury checks aggregating the sum of \$12.70, which were forwarded to the plaintiff.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney

[Endorsed]: Filed October 19, 1951.

[Title of District Court and Cause.]

REQUEST FOR ADDITIONAL ADMISSIONS

Plaintiff, Paul E. Plesha, hereby requests defendant, United States of America, within thirty (30) days after service of this request to make the following additional admissions for the purpose of this action only and subject to all pertinent objec-

tions to admissibility which may be interposed at the trial:

16. Referring to the previous requests for admissions numbered 11 and 12 and the denials thereof:

(a) Is it not true that the plaintiff, when he furnished the information as alleged in paragraph 5 of defendant's answer, took all steps necessary so that, except for the alleged indebtedness and charge mentioned in paragraphs 6 and 7 of the answer herein, he would have received, under the applicable statutes and regulations, the sum of \$233.75 as dividends on his National Service Life Insurance policy referred to in the complaint? ✓

(b) Is it not true that, except for the alleged indebtedness and charge mentioned in paragraphs 6 and 7 of defendant's answer herein, plaintiff, Paul E. Plesha, was entitled as a matter of right to receive the sum of \$233.75 on or about January 24, 1950?

17. Referring to request for admissions numbered 13 and 14; and the denials thereof:

(a) Is it not true that plaintiff, prior to the filing of the complaint herein, and on or about September 1, 1949, requested defendant, in writing, through the Veterans Administration and the Administrator of Veterans' Affairs, to pay plaintiff the full amount of any special dividend to which he might be entitled?

(b) Is it not true that the defendant, through the Veterans Administration and the Administrator of Veterans' Affairs, has failed and refused to pay plaintiff more than the sum of \$12.70 on account

of the special dividend mentioned in paragraph IV of defendant's answer herein?

WHITE, HARBER & SCHEI,
/s/ By LAWRENCE A. SCHEI,
Attorney for Plaintiff

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 8, 1951.

[Title of District Court and Cause.]

ADDITIONAL WRITTEN INTERROGA-
TORIES AND ANSWERS THERETO

To United States of America, Defendant, and to
Chauncey Tranutolo, United States Attorney,
Its Attorney:

Interrogatory No. 26

(a) Referring to the answer to our previous interrogatory No. 2, what person or persons made the "first public and official statements made with regard to Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940" referred to in said answer?

(b) On what date or dates were the statements referred to in said answer made?

(c) What was the content or text of the statement or statements so made?

Answer to Interrogatory No. 26

(a) At the hearings referred to in answer to Interrogatory No. 2, Mr. H. W. Breining, Assistant

Administrator for Insurance, appeared as a witness before the Committee on Military Affairs. However, even though his statements, in certain respects, related to the Soldiers' and Sailors' Civil Relief Act of 1940, they could in no manner be pertinent to the issues involved in this suit. It should be pointed out that it cannot be ascertained what the plaintiff regards as a "public and official statement with regard to Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940", but it was pointed out in answer to Interrogatory No. 15 that the Administrator wrote to the President of the Senate on April 16, 1941, (and to the Speaker of the House) relative to the proposed amendments as to which Mr. Breining later testified in the hearings. Even as late as March 1, 1943, no case had been submitted to the Veterans Administration which required an official determination of the liability of a veteran for premiums advanced under the provisions of the Act, and this question was not presented to the Veterans Administration in such a manner as to require an official legal construction of it until shortly before March 1, 1943, on which date Administrator's Decision 513, which was based on opinion of the Solicitor's office, was approved by the Administrator and published as the official position of the Veterans Administration. This decision constituted the first official expression by the Administrator which was released to the public and given general distribution. The conclusions therein expressed were reconsidered and affirmed in Administrator's Decision 742, April 1, 1947.

(b) The letter of the Administrator, referred to above, was dated April 16, 1941; Mr. Breining's statement before the Committee was made on May 25, 1942; and the first official pronouncement on the primary question was Administrator's Decision 513, March 1, 1943.

(c) Mr. Breining's remarks as a witness before the Congressional Committee which was considering an amendment to Public Law 861, 77th Congress, are not relevant to the issues involved in this suit. However, his remarks are a matter of public record.

Interrogatory No. 27

Referring to the answer to our previous interrogatory No. 7, we attach a photostat copy of a portion of the Eastern Underwriter dated January 31, 1941, and ask you if this is a true and correct reproduction of the statement made by Mr. Breining to said Eastern Underwriter.

Answer to Interrogatory No. 27

The attached photostat of the Eastern Underwriter appears to be an accurate reproduction of the statement of Mr. H. W. Breining. It will be noted from the article that the paper asked Mr. Breining what was the attitude "with reference to insurance written under such circumstances". Mr. Breining's reply to this question was that if a man's application met the requirements of the Act, he was eligible for protection. His further statement, "There is no provision in the Act at this time for collecting from the insured the amount that the

premium with interest may exceed the cash surrender value at the time of termination" (emphasis added), clearly indicates that he was unwilling to extend his comment beyond the express terms of the Act itself, and he did not undertake to state the intent of Congress as manifested by the entire Act. In other words, this was not an official interpretation.

Interrogatory No. 28

Referring to interrogatory No. 8, we attach a photostat copy of what purports to be a carbon copy of a letter addressed to the Veterans Administration by Ray S. Peters, and we also attach a photostat copy of what purports to be an answer to Mr. Peters' letter, which answering letter is on stationery of the Veterans Administration and is signed by one H. S. McCoy, and we ask you if these are true and correct copies of the correspondence referred to in our previous interrogatory No. 8 and in your answer to such interrogatory.

Answer to Interrogatory No. 28

Yes, the photostats and correspondence between Mr. H. L. McCoy and the Jefferson Standard Life Insurance Company appear to be accurate reproductions, but their relevancy to the cases here involved is not apparent since the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 speak for themselves, and a statement or the expression of an opinion as to what the Act does or does not contain by an official of the Government in a hypothetical case cannot be construed as re-

stricting the rights of the Government under the Act itself.

Interrogatory No. 29

We attach a photostat copy of what purports to be a carbon copy of a telegram addressed to the Veterans Administration by one Stewart C. Henig and we also attach a photostat copy of what purports to be the original of a reply to Mr. Henig's said telegram and we ask you if the Veterans Administration received a telegram on or about November 22, 1940, in words and figures as shown on the attached photostat of a telegram signed "Stewart C. Henig" and we further ask you if H. S. McCoy, then Director of Insurance for the Veterans Administration did not reply to Mr. Henig's said telegram in words and figures as shown on the attached photostat of the telegram signed "McCoy Insurance".

Answer to Interrogatory No. 29

Yes, the attached photostats of purported exchange of telegrams between Stewart C. Henig and Mr. McCoy appear to be accurate copies; however, their relevancy to this case is not apparent. The statement of Mr. McCoy that "No provision is made in the Act for collecting from insured the amount paid by Government to insurer" was obviously not a direct answer to the question asked in the telegram, to-wit, "If his policy lapses is he liable for the difference between the cash value and premiums advanced to the Government or insurance company?" (emphasis added) and it is apparent that

Mr. McCoy deliberately confined his reply to the express terms of the Act itself. In this case, also, the question was hypothetical.

Interrogatory No. 30

Referring to the answer to our previous interrogatory No. 9, what is the name of the person referred to in such answer as "The Assistant Administrator for Insurance"?

Answer to Interrogatory No. 30

Mr. H. W. Breining was the Assistant Administrator for Insurance referred to in defendant's Answer to Interrogatory No. 9.

* * * * *

Interrogatory No. 32

Referring to the denial of our previous Request for Admissions No. 15, is it not true that prior to September 1, 1949, the Veterans Administration had publicly announced that persons who had taken out policies of National Service Life Insurance on or after October 8, 1940, and before December 31, 1947, and who had kept such insurance in force for at least three months could make application for a special dividend on such insurance?

Answer to Interrogatory No. 32

Yes, on June 20, 1949, news item, copy attached, was released for publication.

Veterans Administration Information Service
EX. 4210 Br. 2741

(Copy)

Washington 25, D. C.

Immediate Release—Monday, June 20, 1949.

Payment of a \$2,800,000,000 (billion) special National Service Life Insurance dividend on approximately 20,000,000 (million) policies today was authorized by Carl R. Gray, Jr., Administrator of Veterans Affairs.

About 16,000,000 veterans who took out insurance during World War II will be eligible to receive the dividend. Amounts individual veterans will receive are not yet known, as individual calculations have not been completed.

Mr. Gray said that he "hoped distribution of the checks could be started sometime in January, 1950, and be substantially completed during the first half of 1950".

Generally, every veteran who took out NSLI and kept it in force for three months or more will be eligible for the dividend, Mr. Gray indicated. In cases where policyholders have died, the beneficiary of the policy, if the insurance was in force, or those shown to be entitled in case the insurance was lapsed, will receive the payment.

Mr. Gray strongly emphasized that veterans should not write V-A about their dividend, because letters will only cause the payment to be delayed. Special application blanks are now being prepared and it is hoped they can be printed in time to be

available sometime in August in every post office, veterans service organization and V-A Offices.

The form is a 3-fold card upon which the veteran writes his full name, service number, insurance policy numbers and his address. He retains one-third of the card which contains the instructions, and mails the other two parts to the V-A, where the application part of the card is separated and the return acknowledgment portion mailed back to the veteran to inform him that V-A has received the application. Any letter writing, Mr. Gray reiterated, would only serve to delay processing the applications.

National Service Life Insurance was created by Public Law 801 of the 76th Congress, approved on October 8, 1940.

Nearly 20,000,000 policies were issued to more than 16,500,000 (million) members of the armed forces, some veterans having two or more policies. There currently are 7,215,000 policies in force, with a face value of \$41,552,000,000 (billion).

Cutoff date for payment of the dividend is the anniversary date of the policy during 1948. The special dividend will not be paid on policies issued after January 1, 1948, though such policies may participate in some later dividend distribution, Mr. Gray said.

Distribution—RA Complete; SP Complete; DR Complete.

Interrogatory No. 33

Is it not true that the Veterans Administration

made such announcement available to representatives of the press and that it was given nation-wide publicity?

Answer to Interrogatory No. 33

Yes, the attached news item was released to representatives of the press as stated in answer to Interrogatory No. 32 above.

Interrogatory No. 34

Is it not true that prior to making such announcement the Veterans Administration or the Administrator of Veterans' Affairs had made a determination that such a special dividend could and would be paid to such persons who made such application and who had had National Service Life Insurance in force during certain periods of time?

Answer to Interrogatory No. 34

Yes, the basis for computing the extent to which policies in the various groups would participate in the surplus available for distribution was determined in advance, but the question of any particular person's right to any specific amount was left for individual calculation and determination at a later date when that person's policy was reached.

Interrogatory No. 35

Is it not true that when plaintiff and others who had carried National Service Life Insurance during the specified periods made such application for payment of such special dividend they became en-

titled to receive such dividend as a matter of right subject only to administrative processing?

Answer to Interrogatory No. 35

No, policies in effect during the specified period could be held entitled to participate in the surplus available for distribution only after consideration of an application was completed by the Administrator or his subordinates. There were many circumstances which might diminish or destroy any right one might otherwise have had to receive payment of the special dividend.

Interrogatory No. 36

If the answer to the two preceding interrogatories or either of them is "No" or "It is not true" or the equivalent:

(a) What conditions, qualifications or limitations on the payment of such special dividend to such applicants were publicly announced by the Veterans Administration?

(b) What conditions, qualifications or limitations on the payment of such dividend to such persons existed by law, rule or regulation on September 10, 1949?

(c) When the Veterans Administration received such applications from plaintiff and others what, if anything, remained to be done or determined in order that such applicants might receive such special dividend or become entitled to receive same?

Answer to Interrogatory No. 36

(a) All basic facts pertaining to eligibility or qualification for such special dividend were pub-

liely announced; however, it was impossible, of course, to anticipate every factual situation or circumstance which might possibly arise in connection with individual cases affecting the right, or entitlement, to receive payment.

(b) While this question clearly calls for conclusions of law, the defendant has no objection to stating generally that limitations, conditions and qualifications on the payment of such dividend may be found in:

1. The terms of the National Service Life Insurance Act of 1940, as amended, including §812, 38 USCA, and pertinent regulations.

2. The common law right of set-off and other applicable legal principles, some of which are discussed in Administrator's Decisions 513 and 742, copies of which are appended hereto as a part of this answer.

[See pages 56-94.]

3. Administrative action by the Administrator of Veterans Affairs pursuant to authority vested in him by law. (See TB 4-49, 4-55, and 4-56 attached.)

(c) Upon receipt of requested information from policyholders, or their successors in interest, the Veterans Administration caused a review to be made of all of an insured's records for the purpose of determining the insured's age at the time of issue of the policy, the number of months the policy was in force prior to its anniversary date in 1948, and any other facts pertinent to eligibility of the applicant, such as determination that the holder had not forfeited his right under §812, 38 U.S. Code, misstated

his age, procured reinstatement of the policy, or any benefits thereunder by means of fraud, or under circumstances creating rights in the Government to reimbursement (including determination of the existence of indebtedness on the part of the policyholder or beneficiary subject to offset against any dividends otherwise payable). Mathematical calculation of the exact amount payable as special dividend would then be made by multiplying the monthly participation by the number of months the policy was in force prior to its anniversary date in 1948, and by making any lawful deductions indicated. See copy of memorandum dated January 15, 1948.

Interrogatory No. 37

Is it not true that the form for applying for such special dividend (V.A. Form 9-430) was prescribed, issued or printed in June, 1949?

Answer to Interrogatory No. 37

It is true that the form prescribed for completion by policyholders (VA Form 9-430) was printed during the period June to August, 1949, and authorized for general distribution on August 29, 1949.

Interrogatory No. 38

What determinations were made and what rules or regulations were promulgated by the Administrator of Veterans' Affairs concerning the declaration of a special dividend on National Service Life Insurance prior to January 16, 1950? Please attach copies.

Answer to Interrogatory No. 38

See answer to Interrogatory No. 34, *supra*; also Administrator's Decisions 513 and 742, attached as exhibits to answer to Interrogatory No. 36(b)2; *supra*; Memorandum of Administrator dated January 15, 1948, attached as exhibit to Interrogatory No. 36(c), *supra*; Technical Bulletins attached as exhibits to Interrogatory No. 36(b)3, *supra*; Regulations promulgated by the Administrator of Veterans Affairs, found in 38 C.F.R., §8.26 (1949 Edition) and §8.26(a), (Pocket Part of 1949 Edition).

[See pages 94-96.]

Interrogatory No. 39

Is it not true that the Veterans Administration determined that plaintiff, Paul E. Plesha, was entitled to a special dividend in the amount of \$233.75 prior to the assertion of any offset or the making of any deduction from such dividend?

Answer to Interrogatory No. 39

It is true that the Veterans Administration determined that special dividend in the amount of \$233.75 accrued to the credit of plaintiff, Paul E. Plesha, pursuant to rules and regulations pertaining to such dividend. It was previously determined, however, by the Administrator that plaintiff Paul E. Plesha was indebted to the Government in the amount of \$221.05 for premiums advanced by the Government, as is more fully set forth in defendant's Answer.

* * * * *

(Exhibit to Defendant's Answer to Interrogatory No. 36(b)2.)

Administrator's Decision, Veterans' Administration, No. 513—March 1, 1943

Subject: Soldiers' and Sailors' Civil Relief Act of 1940, (Public No. 861, Seventy-sixth Congress), as amended by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Public No. 732, Seventy-seventh Congress).

Question Presented: The provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public No. 861, 76th Congress), do not specifically direct the collection from the insured of the amount paid by the Government to the insurer after the expiration of the period of protection because of failure of the insured to make settlement, but such provision is made in section 406 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Public No. 732, 77th Cong.), raising the question whether the collection may be made under the amendment as to those policies which were placed under the protection of article IV of the Act of 1940 and continued under the protection of article IV of the amendments of 1942.

Facts: While no specific case is presented the question is based upon the following statement of facts:

The provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public 861, 76th Congress), do not specifically direct the collection from the insured of the amount paid by the Gov-

ernment to the insurer after the expiration of the period of protection because of failure of the insured to make settlement prior thereto with the insurer. However, such provision is made in section 406 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Public 732, 77th Cong.), as follows:

The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

It is provided in the regulations, (par. R-3331), that a policy placed under the protection of article IV of the act of 1940 and which was under the protection thereof on October 6, 1942, by reason of a finding having been made prior to that date, will remain subject to the provisions of said act and the regulations published under authority thereof except that the policy will be subject to the benefits and privileges governing the period of protection and settlement as provided in sections 403, 404 and 405 of article IV of the amendments of 1942.

As to those policies placed under the protection of article IV of the act of 1940 and continued under the protection of article IV of the amendments of 1942, it is requested that you advise if the amount paid by the United States may be held as a debt due

by the insured and collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

Comment: Section 408, Public No. 861, 76th Congress, provided that the certificate so delivered should be held by the insurers as security for the payment of the defaulted premiums, with interest, and stated:

To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this act, and no loan or settlement or payment of dividend shall be made by the insurer of such policy which may prejudice the security of such lien. * * *

Section 406 of Public No. 732, 77th Congress, October 6, 1942, provided:

* * * The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

Under the original act, the United States was given a first lien upon any policy receiving the benefits of the insurance article subject only to any existing lien at the time the policy became subject to the act, without any statutory declaration as to any unpaid amount being a debt due the United

States, whereas under the amendment the amount paid by the United States on account of applications approved under article IV, as amended, are declared to become a debt due the United States to be collected either by deduction from any amount due the insured by the United States or as otherwise authorized by law and this notwithstanding the provisions of any other law. It is important to keep in mind that the "amount paid" by the United States under both acts is the amount not protected by the lien, i.e., the amount of the guarantee in excess of the proceeds of the lien.

In the congressional debates on Public No. 732, 77th Congress, Congressional Record, September 28, 1942, page 7788, Representative Sparkman stated:

Under the House bill nothing was said about these amounts being claims against the person in the armed forces after he got out of the service. The Senate provides that they shall be a claim against him and shall be collected against any amounts that may become due him by the United States. The House accepted the Senate provision.

In the Conference Report, 77th Congress, 2d Session No. 2481, it was stated:

The Senate amendment (sec. 406) made such payments a debt due to the United States and authorized collection by deduction from any future amounts due the insured by the United States. The conference agreement retains the Senate provision.

The insurance articles of both Public No. 861, 76th Congress, and the amendment thereto by the corresponding article of Public No. 732, of the 77th

Congress, were intended to furnish a method by which the United States Government voluntarily assumed the guarantee of premiums on commercial insurance carried by service men for their own benefit and convenience while they were in service and for a certain period thereafter. Essentially this was not a contract right and the United States Government received and asked for no consideration for extending the privilege. Under Public No. 861 of the 76th Congress, all that this statute referred to as a method of collection against loss was a first lien upon any policy receiving the benefits of article IV, subject to any preexisting lien. Under the amendment, as shown, where there is a default, the amount, if any, between the proceeds of the lien and the amount guaranteed and paid by the Government as a deficiency is declared a debt of the insured and may be satisfied from any amount due the insured by the United States, or in any manner otherwise authorized by law. Section 408 of Public No. 861, 76th Congress, was not specifically repealed but by section 406 of Public No. 732, 77th Congress, the method of recovery, so to speak, of the United States was extended to permit satisfaction if necessary by deduction from any amount due the insured by the United States or as otherwise authorized by law. It is believed that the amendment, or change in the statute, was merely in cognizance of the original common law right plus the specific provision which permits set-off notwithstanding such exemptions as those in section 454a, title 38, U.S.C., if indeed such exemptions would

prevent such recovery as that here considered. As to applications received as well as those approved prior to the amendment and continued under the act, as amended, the intent seems clear that the provision shall apply—as necessarily any payment made by the United States will be under article IV, as amended.

Held: There exists no question as to any modification of a contract; but in any view the Government's gratuitous assumption of liability conditioned upon the insured's application for the benefits of the act and the insurer's consent would not constitute such type of agreement as would preclude Congressional action looking toward reasonable safeguarding of the public interest. The question raised, whether the collection may be made under the amendment as to those policies which were placed under the protection of article IV of the act of 1940 and continued under the protection of article IV of the amendments of 1942, is answered in the affirmative. (Opinion of the Solicitor, Veterans' Administration, Feb. 3, 1943, approved by the Administrator Feb. 4, 1943, collection of debt due the United States under section 406 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 if policy was protected under act of 1940 and protection continued under Amendments of 1942).

The foregoing decision is hereby promulgated for observance by all officers and employees of the Veterans' Administration.

Frank T. Hines,
Administrator of Veterans' Affairs

(Exhibit to Defendant's Answer to Interrogatory No. 36(b)2.)

Administrator's Decision, Veterans Administration,
No. 742

April 1, 1947

Subject: Debt due the United States as to insurance protected under the Soldiers' and Sailors' Civil Relief Act of 1940—Effect of 1942 Amendments. Reconsideration of Administrator's Decision No. 513.

Questions Presented: 1. Whether, in view of the 1942 amendments to the Soldiers' and Sailors' Civil Relief Act of 1940, a payment made by the United States in discharge of the premium obligation pursuant to an application under the 1940 Act has the effect of creating a debt which the insured owes to the Government.

2. If a debt results, whether it may be collected in whole or in part out of other benefits to which the insured may be entitled under laws relating to veterans.

Comment: The correctness of Administrator's Decision No. 513 dealing with the above subject has been seriously questioned. The arguments which have been made in opposition to the Decision are regarded as sufficient to justify a re-examination of its underlying principles. There is a well recognized rule that an established administrative decision cannot be reversed if to do so would divest an individual of a vested right thus fixed. *United States vs. Bank of Metropolis*, 15 Pet. 377; 10 L. Ed. 744; of.

Butte A. & P. R. Co. vs. United States, 290 U. S. 127, 78 L. Ed. 222. It is also well recognized that an established administrative construction or practice should not be overturned in any circumstances except for the most cogent reasons. United States vs. Citizens Loan & Trust Co., 316 U. S. 209, 86 L. Ed. 1387. The rule last mentioned, of course, does not and must not be permitted to preclude reversal if, in the light of subsequent experience or more deliberate consideration, the decision is shown to be clearly erroneous, for the law is not so inflexible as to require administrative officers to perpetuate their errors or those of their predecessors. Bell vs. Hearne, 19 How. 252, 15 U. Ed. 614. Especially is this so in circumstances like those presently involved in which, by virtue of the specific provisions of section 407, Article IV, of the Soldiers' and Sailors' Civil Relief Act Amendments included in Public Law 732, 77th Congress, the findings of fact and conclusions of law made by the Administrator of Veterans' Affairs are not subject to review by other authority. Since a reversal of Administrator's Decision No. 513 would not disturb vested rights of an individual, there is no impediment thereto if it be determined that the Decision was erroneous and is not supportable.

The question has undergone careful re-examination. The language of Article IV of each of the several Acts (Public No. 103, 65th Congress, approved March 8, 1918, 40 Stat. 444-447; Public No. 861, 76th Congress, approved October 17, 1940, 54 Stat. 1183-1186; Public Law 732, 77th Congress, ap-

proved October 6, 1942, 56 Stat. 773-776, 50 U.S.C., app. §540-548) has been studied and the legislative history of each has been fully explored. As a result of this study it has been concluded that Administrator's Decision No. 513 should be affirmed not only insofar as it holds that a general, unsecured debt in favor of the United States results from payments made pursuant to transactions under the 1940 Act but also insofar as it holds that collection by setoff may be made in such cases. It is proper, however, to record not only the reasons for this conclusion, but also the arguments which have been advanced in favor of a reversal of the Decision.

The question involved in Administrator's Decision No. 513 was stated as follows:

"Question Presented: The provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public No. 861, 76th Congress), do not specifically direct the collection from the insured of the amount paid by the Government to the insurer after the expiration of the period of protection because of failure of the insured to make settlement, but such provision is made in section 406 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Public No. 732, 77th Congress), raising the question whether the collection may be made under the amendment as to those policies which were placed under the protection of Article IV of the Act of 1940 and continued under the protection of Article IV of the Amendments of 1942."

The question was answered in the affirmative. Implicit in the holding of the Decision are two points:

(1) that a payment made by the United States in discharge of the premium obligation pursuant to an application under the 1940 Act has the effect of creating an obligation, i.e., a debt, which the insured owes to the Government and (2) that the debt may be collected by the method prescribed in section 406 of the 1942 Act (Public Law 732, 77th Congress). A reason assigned in support of the point last mentioned was the fact that any payment made by the United States would be subsequent, in point of time, to the 1942 Act, and the provisions thereof would govern as to collection of the resulting debt. It also seems that the declaration in section 406, Public Law 732, to the effect that the amount paid " * * * to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States * * *," was regarded as merely a legislative recognition of the original common law right of the United States to be reimbursed, and, hence, because the lien provisions of section 408 of the 1940 Act (Public No. 861, 76th Congress) were not specifically repealed, section 406 of the 1942 Act provided additional support for the conclusion that a debt exists. The real question, of course, is not whether a reason assigned for the Decision was correct but whether and to what extent the Decision itself was a proper one under the circumstances. This question requires consideration of the legal relationship between the insured and the Government which flows from transactions arising under the 1940 Act. For the purpose of determining what that relationship is, it is not

necessary, and perhaps not even proper except for limited purposes, to take into account the provisions of the 1942 Act.

The arguments which have been made against Administrator's Decision No. 513, may be summarized as follows:

(1) The indemnity provision of the 1940 Act (section 408) is identical with the indemnity provision of the 1918 Act (section 409), and neither affords a right or source of recoupment for the Government other than the enforcement of a lien on the policy.

(2) The legislative history of the 1918 Act, as well as the legislative history of the 1940 and 1942 Acts, reflects an understanding on the part of Congress that the United States was not to be repaid for disbursements it made to insurers over and above the cash surrender value of the policy.

(3) The fact that the 1942 Act specifies that the amount paid by the United States as a result of an application made thereunder shall become a debt due the United States by the insured, whereas the 1940 Act is silent in this respect, indicates that an amount paid by the United States as a result of an application under the 1940 Act does not become a debt due the United States.

(4) The 1940 Act, it is said, has been generally interpreted by the Government itself, as well as by others, as affording no right of recourse against the insured. In support of this argument reference has been made to certain statements of persons outside the Government, examples of which are the state-

ments attributed to Ganson J. Baldwin, in *Legal Effects of Military Service under the Soldiers' and Sailors' Civil Relief Act*, Yale University Press, Third Edition, p. 20, and the Eastern Underwriter of November 13, 1942, p. 11, to the effect that under the 1942 Act the insured must reimburse the Government whereas he was not required to do so under the 1940 Act. It is also said that the Government, in its instructions and regulations under the 1940 Act, failed to mention recourse against the insured, and referred only to its right to repayment out of the cash-surrender value of the policy.

Additional arguments have been suggested and others might be thought of, but, essentially, they constitute no more than a restatement of or an elaboration upon the points hereinabove stated. It is obvious, however, that consideration of the points stated, whether or not a categorical answer to each is deemed essential, would not be complete without extensive reference to the legislative history of the three acts and elaborate quotation from the record of proceedings thereon—a requirement which could not be avoided in any event if the true picture is not to be distorted. While, as may be inferred from what has already been said, the present decision rests almost entirely upon the language employed as well as that omitted in the Act and upon the resulting relationship, the legislative history and the administrative practice will be explored before formalizing the reasons for the conclusion.

The purpose of Article IV of the 1940 Act, as well as the purpose of Article IV of the 1918 Act,

was to protect from lapse certain policies of insurance (other than Government insurance) acquired by servicemen within the periods specified. It was recognized, of course, that due to the exigencies of the service, insureds might not be able to make remittances for premium payments within the time required by policy provisions. Accordingly, each of the Acts provided, in section 405, that policies of insurance protected thereunder should not lapse or be forfeited for the nonpayment of premiums during the period of such protection. The insurer was protected by bonds (under the 1918 Act)^o and by certificates (under the 1940 Act) issued by the Government covering the amount of the deferred premiums with interest, and, upon the termination of protection under the law, a balancing of accounts between the insurer and the Government was required, wherein, as to policies not matured by death or continued in force by the insured's payment of premiums, the insurer was credited with the bonds or certificates covering past due premiums and interest and the Government was credited with the cash surrender value of the policies. Under its guaranty the Government was required to pay the amount by which the bonds or certificates exceeded the cash surrender value. The Government was given a first lien on the policy, subject to any pre-existing lien, but nothing was said in either Act as to what recourse the Government would have against the insured in respect to the amount it paid over and above the amount secured by the lien. The insurance provisions of the two Acts are, in all es-

essential aspects, identical, and since the legislative history of the 1940 Act is illuminating only to a very slight extent, it is proper to look to the legislative history of the earlier Act.

The proposal to grant the relief for soldiers and sailors which resulted in the enactment of Public No. 103, 65th Congress, was submitted jointly by the War and Navy Departments on August 29, 1917, and was introduced in the Senate as S. 2859. That bill provided in section 13 that within certain limitations, insurance granted prior to September . . . , 1917, should not lapse or be forfeited for nonpayment of premiums falling due during the period the insurance was protected, but, as introduced, the bill provided no means by which the insurer could collect premiums or be fortified with any certainty that they would be paid. These omissions evoked strenuous opposition on the part of insurance companies, with the result that, pursuant to suggestions by certain members of the Senate Committee (Hearing and Memoranda before the Subcommittee of the Senate Committee on the Judiciary on S. 2859 and H.R. 6361, pp. 119-121, 123, 132-139). a substitute provision was prepared which received the approval of both Government and insurance representatives. The substitute contained essentially the provisions finally adopted as Article IV of the Soldiers' and Sailors' Civil Relief Act of 1918. It is made plain by the provisions of the Act, as well as by its legislative history, that the undertaking of the Government was not to pay the premiums but only to guarantee their payment; in other words, the Govern-

ment did not displace the insured as the principal obligor. It is true, of course, as above indicated, that the Act did not specifically declare that a payment made by the Government to an insurer in final settlement of the insurance account should result in the creation of a debt owed by the insured to the Government; nor did it specifically declare that the payment should not have that result. It is equally true that statements may be abstracted from the hearings which tend to support arguments that the transaction did and that it did not create a debt. So, too, committee reports on the legislation are not very helpful. The report of the House Committee on H.R. 6361 (Report No. 181, 65th Congress, First Session; p. 151, Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, United States Senate), contains (pp. 157-158) the following statement:

"Any premiums so secured by Government bonds are paid as a loan on the policy. The Government to secure reimbursement is given a first lien on the value of the policy or its proceeds. * * * Just what the Government's financial burden will be can be little more than a guess, but it is plain that it will not be large. In the first place the Government only guarantees the payment of the premiums. If the soldier dies the insurance company will get its premiums out of the policy and the Government's guaranty will not be called upon. If the soldier comes back from the war he will repay the premiums if he continues the policy, and if he lets the policy

lapse the Government will be subrogated to his rights."

The language quoted above constitutes as clear a statement as any that may be found in the legislative history, but its inadequacy as an answer to the present problem is at once apparent when it is observed that it is as consistent with one view as it is with the other. Thus, so far as the 1918 Act is concerned, the failure of the legislative history to resolve the question requires that the answer be found where it should be sought in the first place—in the language of the statute, by application of established principles of law to the relationship thus created.

The 1940 Act (Public No. 861, 76th Congress, approved October 17, 1940) resulted from bills (S. 4270 and H.R. 10338) presented simultaneously by the War Department to the Senate and the House of Representatives. The insurance provisions of these bills were patterned on the 1918 Act. The Veterans Administration did not participate actively in the formulation of this legislation and did not make any specific recommendations concerning it. The reports of the committees (Senate Report No. 2109 to accompany S. 4270 and House Report No. 3001 to accompany H.R. 10338) contain almost identical language explaining the insurance provisions. In pertinent part, the Senate Report (p. 3) states:

"In the case of life-insurance policies, upon application by persons in the military services, the Administrator of Veterans' Affairs may guarantee payment of premiums in order to prevent lapsing

or forfeiture of policies. Such persons may, within 1 year after leaving the military service, pay up premiums unpaid by them and resume payment of regular premiums. If they do not, the policy lapses and the cash surrender value accrues to the Government to the extent necessary to meet the cost of the premiums which it has guaranteed."

Here again the legislative history is of little, if any, help, and the insurance provisions of this Act, like those of the 1918 Act, must be interpreted on the basis of the language employed in the statute.

The administrative practice under the 1918 and 1940 Acts has been advanced as an argument supporting the view that the insured owes no debt to the United States on account of its payment of the premiums on his insurance. For convenience, this practice will be examined before turning to the 1942 Act. In the administration of the 1918 Act the ultimate net loss to the Government, as shown by the Annual Report of the Director, United States Veterans Bureau for the fiscal year ending June 30, 1924, p. 445, was \$19,518.40. The precise extent of the Government's efforts to collect from insureds who permitted their insurance to lapse under conditions requiring the Government to pay to insurers the difference between the premiums with interest and the cash surrender value of the insurance is not known, but it is clear that, in the administration of the 1918 Act, collections were effected in some cases. A list of at least 14 such cases is presently at hand. They reflect collections during the years 1923-24, and one such collection was made as late as October

8, 1925. For present purposes the amount of such collections and the extent to which efforts were made to effectuate them are matters of no importance. The significant thing is that they negative any idea or assertion that an administrative practice prevailed not to regard the insured as indebted to the United States.

It has been said that until Administrator's Decision No. 513 was released on March 1, 1943, the 1940 Act had been administered in such fashion as to indicate an administrative construction that the Government had no claim against the insured on account of any payments it made to the insurer over and above the cash surrender value of the policy. That is not a correct statement. In the first place, no legal opinion on the subject had been requested or given prior to the submission which led to Administrator's Decision No. 513. Secondly, administrative action under the law had not proceeded far enough to establish any fixed practice in respect to the question now under examination. It is true, of course, that a form of application for benefits under the 1940 Act had been prepared shortly after the Act was approved and that the form contained no assertion as to whether the insured would become indebted to the Government by reason of any payments it made to the insurer. The form (No. 380) did contain the following statement, appearing immediately above the place provided for the insured's signature:

"In consideration hereof, I hereby consent and agree that the United States shall be protected in

the amount of any premiums and interest guaranteed on the above numbered policy in the event of its maturity as a claim, or out of the cash surrender value of the policy at the expiration of the period of protection under the Act."

In this, as in all other essential matters, it was similar to the application (Bureau of War Risk Insurance Form 718), used in connection with the 1918 Act, reading as follows:

"I agree that the United States shall be reimbursed for any money advanced on account of unpaid premiums on the above policy (with interest at the rate of 5 per cent per annum); out of the above policy, in the event of death or maturity, and out of any cash value, in the event such premiums are not paid within one year after the termination of the present war or the termination of my period of military service, whichever date is the earlier."

Each of these forms was patterned on the Act to which it related and, like the Act, it was silent as to whether the transaction resulted in a debt. As to collections under the 1940 Act, no administrative practice had grown up, because, by the terms of the Act itself, the time for that had not arrived when the amendments of 1942 were proposed.

Early in 1941 extensive amendments to the 1940 Act were prepared by the Veterans Administration and submitted to both houses of Congress for consideration. These amendments were designed largely to liberalize the law, but they also had as one of their purposes the clarification of certain points which had been controverted. Among such points

were the following: (1) the question of the consequent debt; (2) The question of the right of offset out of other benefits (section 406); (3) the question of coverage of Government (Converted) and National Service Life Insurance policies (section 400). Due to misconception as to the first, some insurance agents engaged in a practice of selling the maximum amount of insurance, \$5,000, at relatively high premium rates, to persons expecting immediate induction into the service, thereupon assuring such persons that they would have to pay only one quarterly premium and that thereafter the Government would carry the insurance free so long as they were in the service and during the prescribed time thereafter.

The draft of the bill which led to the enactment of the insurance provisions of Public Law 732, 77th Congress, was introduced as S. 1372 in the Senate on April 22, 1941, and as H.R. 4546 in the House of Representatives on April 28, 1941. As thus introduced the draft included, as a part of section 406, the following language:

"* * * The amount paid by the United States to an insurer shall become a debt due to the United States by the insured * * *"

Pursuant to a proposal made by the Association of Life Insurance Presidents on May 16, 1941, the above quoted language was changed to read:

"* * * The amount paid by the United States to an insurer On Account of Applications Made Subsequent to Approval of This Act shall become a debt due to the United States by the insured * * *"

As passed by the Senate on November 10, 1941, and as finally approved, section 406 reads, in pertinent part, as follows:

"* * * The amount paid by the United States to an insurer On Account of Applications Approved Under the Provisions of This Article, As Amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law."

"Substitute bills were introduced in the House and one of them, H.R. 7164, as passed by the House on June 18, 1942, contained no provision similar to the above. However, the language was restored in conference. The conference report to accompany H.R. 7164 (Report No. 2481, dated September 24, 1942) stated:

"Under the House bill any amounts paid by the United States to an insurer on account of approved applications do not become a claim against the owner of the policy. The Senate Amendment (sec. 406) made such payments a debt due to the United States and authorized collection by deduction from any future amounts due the insured by the United States. The conference agreement retains the Senate provision."

It seems highly significant that in explaining the conference report on the floor of the House (Cong. Rec., September 28, 1942, p. 7788) Representative

Sparkman stated: "Under the House bill nothing was said about these amounts being claims against the person in the armed forces after he got out of the service. The Senate provides that they shall be a claim against him * * *" (Emphasis supplied.)

When the Veterans Administration representative appeared before the House Committee on Military Affairs on May 25, 1942, he testified as follows:

"The Chairman: You said something, as I understood you, about the cancellation of the policy regardless of the equity of the soldier in the policy. For instance, if he paid in so much money, and it had a certain reserve value, they would cancel it anyway?"

"Mr. Breining: The act says that the policy shall be surrendered at the end of the coverage, unless a man settles with the insurer otherwise, even though he may have a substantial equity.

"What we propose in the system we are advocating is simply that the Government guarantee the premiums; when a man applies for coverage under this act, that the Government guarantee the premiums, leaving it to the man and the insurer to settle any accounts between them, and at the end of the term of coverage of the act, if the man has an equity in the policy, that the equity will either be covered by extended insurance, or such other provisions as the policy may call for.

"The Chairman: In other words, do the same thing, so far as the Government is concerned, as a private insurance company does, by guaranteeing

the extended insurance value for the cash that may have been paid in?

"Mr. Breining: Exactly.

"The Chairman: Does the revised bill which the subcommittee has suggested contain that provision?

"Mr. Breining: Yes, it does; and in the bill that was just passed by the Senate, and in the bill proposed by the subcommittee that is covered and the accounting system is simple, that is, it leaves it to the man and the insurer to settle their accounts, except where there is a deficiency, and in such an event the Government will pay the deficiency. In the bill as proposed by the subcommittee there is a provision that allows not only a year after the termination of the man's military service, as defined in the act, but there shall be an additional 3 years which the man may have to pay off whatever indebtedness may be against the policy under this act.

"The Chairman: That continues the policy in effect, but would he be required to pass a physical examination at the end of the 3 years?

"Mr. Breining: No, the policy will remain in full effect over the full period of time.

"If the cash value of the policy is as great or greater at the termination of the coverage of this act than the lien against it, then by simply paying the premium he can continue the policy in force and the loan made under this act be liquidated by him in any such manner that he wishes.

"Only where the amount of the loan exceeds any value which the policy may have, does the Government concern itself with the matter then he is, in

substance, given 4 years to discharge that excess amount, having to pay only at the end of the second year a third of the amount, the remainder being payable during the ensuing 3 years.

"The Chairman: What I am concerned about is this: Under the provisions of the bill as presented here, would the soldier who is carrying an insurance policy be protected to the end of the duration?

"Mr. Breining: Yes; he would, and the amendment provides that if at the end of the period of the coverage he wishes 3 years more, all he has to do is pay a third of the excess indebtedness and that will carry him for the 3-year policy, at which time he also has to make provision to pay the current premiums and arrange for the other two-thirds being paid by installments.

"The Chairman: If he had a loan against the policy he could adjust it and continue to carry the insurance by the payment of the premiums, just as a straight, ordinary life policy?

"Mr. Breining: According to the terms of the contract. It is a liberalization, distinctly. (Hearings, pp. 36-37.)

* * * * *

"The Chairman: How are the premiums paid on the existing \$5,000? Does the insured pay half and the Government pay half, or does the insured pay all of it?

"Mr. Breining: The insured is liable for all of the premiums of the \$5,000 policy, the Government acting really as a guarantor. However, if there is a default, there would not be any liability for the

whole amount, in excess of the cash value under present construction of existing law. (Hearings, p. 38.)

* * * * *

"Mr. Harness: Your recommendation is that the amount be limited to \$5,000?

"Mr. Breining: Yes.

"Mr. Thomason: You mean that is the maximum any soldier would have?

"Mr. Breining: That is the maximum that would be carried under this act. That is distinct from the \$10,000 under the Government's policy, so this would permit insurance in the amount of \$15,000 in all, to be carried by the man without any extra burden of paying premiums to a commercial insurer.

"Mr. Sparkman: That means that the Government will guarantee the payment of premiums to private insurance companies up to the amount of \$5,000.

"Mr. Breining: Yes.

"Mr. Thomason: That is in addition to the \$10,000?

"Mr. Breining: Yes.

"Mr. Sparkman: But the gentlemen should understand this, that the soldier is not relieved from the liability of paying premiums. The Government simply guarantees that they will be paid * * * (Hearings, p. 40.)

* * * * *

"Mr. Sparkman: Every payment that the Gov-

ernment makes on each policy is secured by any cash-surrender value there may be in the policy?

"Mr. Breining: Yes.

"Mr. Sparkman: The only loss that the Government could sustain would be when and if the payment ~~exceeded~~ that cash-surrender value which the soldier did not pay back.

"Mr. Breining: That is true, but many of these policies are just term policies, without any cash-surrender value or reserve value, because the writing of term policies is much more prevalent now." (Hearings, pp. 40-41.)

The following extracts from the debates in the House of Representatives on H.R. 7164 (Congressional Record, June 18, 1942, pp. 5548-5549) are pertinent:

"Mr. Sparkman: The Government steps in immediately upon the application of the soldier and guarantees the payment of the premiums. Remember, the Government does not actually pay the premiums. The Government simply says to the insurance company, 'We will guarantee that these premiums will be paid.' Now, having once taken that position, the Government continues to guarantee the payment of those premiums. If the cash reserve of the policy is used up, the Government still guarantees the payment of the premiums, and in such a case when the soldier comes out of the service, there will be an excess indebtedness on the policy, and the soldier then has the right within 12 months' time to arrange with the insurance company to pay one-third of that excess indebtedness during that 12

months' period, and to adjust the balance over a period of 3 years.

* * * * *

"Mr. Keefe: Just so that I may understand this statement correctly, if a man goes into the military service and he has a private contract of insurance in force, upon which there may be a cash-surrender value, he is required, under the terms of that contract, to pay premium installments in order to keep his contract in force. If he has not the necessary income, the Government, under this act, as I understand it, steps in and guarantees the payment of that premium so as to keep his contract of insurance in force. Then when he comes out of the service he owes an accumulation of back premiums, which the Government has guaranteed in order to keep his contract in force, and then he may either apply, as I understand you, the cash-surrender value of the policy in liquidation of those past-due premiums that the Government has guaranteed or he may enter into a contract and pay those premiums out of other funds over a period of 3 years. In no event do I understand that the Government itself actually pays the money to the insurance company, but the basis of guaranteeing these premiums is so as to keep his policy in force and effect, so that he will have it when he comes out of the service. Is that correct?

"Mr. Sparkman: The gentleman has correctly stated the situation."

It is necessary to bear in mind that the debate in the House of Representatives, from which the

foregoing is extracted, was on H.R. 7164, which did not contain the provision of section 406 now in question or any similar provision. In this respect, H.R. 7164, at the time of the above-mentioned debates and at the time of its adoption by the House, was silent on this question just as the 1918 and 1940 Acts had been.

Fairness compels admission that the legislative history of the 1942 Act reflects a probable belief, though an incorrect one, on the part of the 77th Congress that the 1940 Act (passed by the 76th Congress) had been construed as not giving rise to a debt owing by the insured to the Government upon the latter's payment to the insurer of the amount by which the premiums with interest exceeded the cash surrender value. And it may very well be said that some members, without too much opportunity for reflection upon the legal consequences, may have entertained the belief that the 1940 Act should be so construed. But, if true, do these circumstances compel a holding that no debt arises? Careful consideration leads to the conclusion that they should not be allowed to do so. Highly significant, it would seem, is the fact that Congress did not at any time provide an express exemption from the debt; the only express provision is directly to the contrary—in 1942. Section 406 of the 1942 Act merely declares a debt in respect to applications approved under that Act; it does not absolve any debtor. Manifestly, transactions resulting in payment under the 1940 Act, which must be completed according to the terms of that Act, either give rise to a debt or they

do not do so. If they do, they remain unaffected by the 1942 Act. If they do not, it would have been beyond the power of Congress in any event to change the agreement retroactively so as to create a debt. Hence, all that was done and said in the 1942 Act or in the legislative proceedings incident thereto does not change the legal relationship.

What, then, are the obligations of the insurer, the insured and the Government, in respect to applications for protection under the 1940 Act? By accepting the Acts' provisions, the insurer becomes obligated to maintain the insurance in force while awaiting later payment of earned premiums by the insured or by the Government, if the insured does not pay. The right of the insurer to receive the premium payments is absolute, for the protection was afforded and it must be paid for. The amount that must be paid is fixed: it is the total amount of premiums that fall due during the period of protection plus interest from the several due dates.

The absolute right of the insurer to receive the premium payments necessarily means that someone is obligated to pay them and that the insurer is entitled to look to such person or persons for payment. Primarily, the insurer looks to the insured for payment. That this is so is made plain by the provisions of Section 410 which, in effect, require the insured, within one year after the time when the Act ceases to be in force, to pay all past-due premiums with interest if he desires to continue the insurance. It is also made plain by the provisions of section 409, pursuant to which, if the insured dies

while in service, the insurer deducts the premiums, with interest, from the proceeds of the insurance. And it is made clear by the Act's commitment of the cash surrender value (which, in other circumstances, is ordinarily regarded as the insured's to dispose of as he pleases) to stand for the premiums owing to the insurer. Of course, if the insured fails to discharge his obligation to pay the premiums with interest, the Government is required to pay them, but in so doing it is entitled to receive credit to the extent of the cash surrender value of the policy so that the Government is actually out of pocket only that amount which represents an excess of the premiums with interest over the cash-surrender value. This, and no more, could the insurer actually compel the insured to pay. Hence, the Government pays only to the extent that the insured could be compelled to do so. Under these circumstances, the Government pays, as guarantor, the insured's obligation and, applying principles of law so well established as to be incontrovertible, the Government has the right to be reimbursed by one whose debt it has paid.

There are many reasons why the conclusion just stated should be accepted as correct. Those readily apparent and probably most significant will be referred to in some detail.

First. The lien provision in section 407 of the 1940 Act that the United States, to indemnify it against loss, shall have a first lien on the policy can only mean that it is the total amount of the premiums and interest to which the Government's ob-

ligation attaches. Obviously, the lien provision is inconsistent with an assertion that the Government's obligation relates only to the amount by which the premiums and interest exceed the cash surrender value, for if that were true the lien provision would be utterly meaningless since the res, i.e., the cash value of the policy, to which it attaches, would be extinguished before the Government's obligation matures. So it must be concluded that as to the total amount of the premiums with interest the insured remains the principal obligor and the Government is secondarily liable as guarantor. Hence, there is no basis whatever for an assertion that the insured is the principal obligor for only so much of the total sum as represents the cash surrender value of the policy and that the Government is the principal obligor as to the remainder. Yet this must be the inevitable result of a holding that the insured is not indebted to the Government for the amount it pays to the insurer.

Second. To hold that the insured is not indebted to the Government in such circumstances would produce results so inequitable and falling so unevenly upon those protected under the 1940 Act that the intelligence and sense of fairness of Congress should not be impugned by ascribing to it such an intent unless no other conclusion can be drawn from the language of the Act itself. For example, it would be possible, in that event, for an insured, whose policy had no cash surrender value or only such as accrued at no cost to him, to allow his insurance to lapse upon termination of the Act's protection,

thereupon pay nothing at all, and yet be free of all obligations. On the other hand, the Act specifically requires another, who loses his life in service, to pay the premiums by having them deducted from the proceeds of the insurance. Still another who at the time of seeking the Act's protection was insured under a policy possessing a cash surrender value—substantial in amount but not exceeding the unpaid premium—, must lose even that which he had before entering service unless he pay the premiums. He cannot avoid such loss by having the Government step in and pay the insurer, and hence he cannot even delay the payment beyond the time provided. Finally, one who desires to continue the insurance in force after the Act's protection ceases must pay the back premiums according to the terms of his policy, and this is so no matter what the cash surrender value may be. But, it has been argued, inequities are not infrequently found in legislation, and it is said that they ought to be overlooked here. These inequities, however, are precisely the opposite of what one would expect to find when a statute falls unevenly upon those affected by it. Moreover, their very existence depends upon a construction of the Act necessitating the addition of words not found therein, for the Act nowhere contains language relieving the insured of an obligation to reimburse the Government. Ordinarily, in the absence of an agreement or specific language to the contrary, one who benefits by having his guarantor pay his debt may be required to reimburse the latter.

Third. Inequalities of a sort not to be expected would result in other respects. For example, it cannot be denied that those who applied for protection under the 1942 Act are burdened with a debt if the Government pays their premiums; yet they, no doubt, were called into or entered the service when the nation was at war and they faced the possibility of early combat duty. Many, perhaps most, of those who applied under the 1940 Act entered service at a time when there could be no certainty that war would ensue. There is no valid reason for relieving the latter group of the obligation to repay while holding the former to theirs.

Fourth. Premiums on insurance issued by the Government under the War Risk Insurance Act, as amended October 6, 1917, and under the National Service Life Insurance Act of 1940 (approved only nine days prior to the approval of the Soldiers' and Sailors' Civil Relief Act of 1940) are required to be paid, and, except in the event of waiver on account of disability as provided in the contracts and the law, the insured could not and cannot avoid paying them. It seems unreasonable to assume, therefore, that Congress intended to have the Government provide in any circumstances private insurance at no cost to the insured while in every case requiring the payment of premiums on Government insurance.

Finally, the fundamental basis of the entire Act is protection of the person in service by temporary moratoria on certain obligations—as contract liabilities, rents, taxes and so forth. As this principle could not apply to insurance premiums payable only

voluntarily, the device was adopted of having the Government guarantee such payments upon the insured's application. In effect, the Government became the collecting agent for the insurers; but it is significant that under no circumstances did the Government undertake to assume any liability or obligation, as such, of any person subject to the provisions and benefits of the Act.

The other question decided by Administrator's Decision No. 513, that is, the right of recovery, has not been questioned, aside from the contention that there is nothing to recover under the original 1940 Soldiers' and Sailors' Civil Relief Act. If the foregoing conclusion is correct, that as a result of the Veterans Administration paying a veteran's premiums on his insurance the veteran is indebted to the Government, it follows as a matter of law that such indebtedness is collectible if the debtor have any assets which are not exempt. This raises the question whether benefits to which he otherwise may be entitled under laws relating to veterans are exempt from such claim or whether it may be collected in whole or in part out of such other benefits.

For more than half a century the Congress has thrown protection around benefits to veterans and their dependents. This protection took the form of section 4747, Revised Statutes, section 28, War Risk Insurance Act, October 6, 1917, as amended, and section 22, World War Veterans' Act, June 7, 1924, as amended. The exemptions afforded by such enactments were held by the accounting officers generally, and specifically by the Comptroller General,

not to prevent setoff in respect of claims of the United States. Indeed they were so construed by such officials as to permit the collection of one person's debt out of benefits accorded another person by way of derivative right, as, for example, collecting the veteran's indebtedness from payments due his widow or minor children. In 1935 Congress repealed all of the foregoing provisions by the Act of August 12, 1935, Public No. 262, 74th Congress, and provided in section 3 thereof (38 U.S.C., 454 (a)) that payments of benefits made to or on account of a beneficiary under any of the laws relating to veterans shall be exempt from the claims of creditors but that such provisions shall not attach to claims of the United States arising under such laws. This had the intended effect of excluding recovery, from benefits payable, of indebtedness arising under other laws and circumstances, but, as construed and applied by the accounting officers, it did not in all cases prevent recovery of one person's indebtedness from benefits payable to another. To clarify this matter there was enacted section 5, Public No. 866, 76th Congress, approved October 17, 1940, the same date on which the President approved Public No. 861 of the same Congress, the Soldiers' and Sailors' Civil Relief Act of 1940. This section 5 (38 U.S.C.A. 454 (a)) amended the foregoing section so as to confine the Government's right of collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Veterans Administration to claims of the United States against the person or beneficiary who be-

comes indebted by reason of overpayments or illegal payments made to him or to his dependents as such under laws relating to veterans. It will be noted that while the 1935 statute related to claims of the United States arising under laws relating to veterans, the 1940 enactment related to claims arising out of overpayments or illegal payments under such laws. The real purpose of the amendment as shown by the legislative history was stated in Administrator's Decision No. 607 as follows:

"* * * The exact purpose and effect of this amendment is to make clear (1) that any collection out of benefits flowing to an individual or to such individual's estate would be only on account of the indebtedness of such individual and not of any other, and (2) that ~~only~~ those debts could be so collected or off-set which arose out of payments made under the laws relating to veterans, thus overcoming the long-established precedents based upon the Comptroller General's decisions mentioned above. These provisions have, by statute, been made applicable to subsequently enacted laws, as for example, National Service Life Insurance policies under the National Service Life Insurance Act of October 8, 1940, section 616 of which makes applicable the provisions of Public No. 262, 74th Congress, as amended. Similarly, section 1500, Public Law 346, 78th Congress, provides that the 'provisions of Public No. 262, 74th Congress, as amended (38 U.S.C. 454 (a)), shall be for application under this Act * * *'. The report mentioned, *supra*, stated specifically that this related, among

other things to the exemption from claims of creditors.

'It is therefore apparent that as to any indebtedness arising under such Act and not waived under the wide authority of the Administrator, there is for consideration the application of the provisions of said Public No. 262 as amended. It will be observed that thereunder off-set shall be confined to 'overpayments or illegal payments' made under laws relating to veterans. It has consistently been held in construing this specific language that anything of value which a veteran secures under color of the laws relating to veterans and to which he is not specifically entitled by such laws is an overpayment within the meaning of the statute. * * *'

Thus, as indicated in Administrator's Decision No. 607, in construing such laws it has been held consistently that anything a veteran receives under laws administered by the Veterans Administration to which he is not entitled as a matter of right is an overpayment, and unless waived may be recovered by setoff against the benefits to which he is otherwise entitled. Of course, in applying this, recovery is made in such manner as not to defeat the purpose of benefits otherwise payable, that is, by deduction of small amounts over an extended period of time.

With respect to the specific ruling in Administrator's Decision No. 607 existing to guarantees paid on loans under Title III of the Servicemen's Readjustment Act, 1944, violent exception was taken

by several interested organizations, and representations were made to the Congress resulting in the introduction of bills which, if enacted, would have precluded such recovery by way of offset. The Administrator of Veterans Affairs, reporting adversely on one of said bills (H.R. 5446), relied upon the principles declared in Administrator's Decision No. 607 and forwarded copies of said Decision, or of the legal opinion upon which it was based, to the committees considering this and similar bills. None of said bills was enacted or even reported, and, although numerous amendatory acts relating to veterans were passed by that and the succeeding (79th) Congress, no Congressional action disagreed with the principles stated in said Decision.

The failure of Congress to disagree, as reflected by the developments just described, while possibly persuasive, is of course not determinative. But it is important that in the 1942 Amendments to the Civil Relief Act the Congress specifically provided for collection by setoff or otherwise in the case of payment of guarantees made on applications filed under the amended Act (section 406). Hence, to say that Congress thereby negated the same or a similar result in respect to applications under the prior Act would be to adopt the argument of legislation by negation—hereinabove rejected as to resultant indebtedness for the same reason. As said in Administrator's Decision No. 607, if the Government pays a veteran's obligation pursuant to law and the veteran refuses to pay the debt therefrom arising, he is in a very real sense overpaid and there is an

overpayment within the meaning of the exemption statute, supra, 38 U.S.C.A., 454 (a). Viewed in that light it is clear that the recovery provision of section 406 is little, if any, more than a recognition of the right which theretofore existed and is a mere clarification of the applicable statutes.

Held: 1. A payment made by the United States in discharge of the premium obligation pursuant to an application under the Soldiers' and Sailors' Civil Relief Act of 1940, has the effect of creating a debt which the insured owes to the Government.

2. The resulting debt may be collected by setoff against other benefits to which the insured may be entitled under laws relating to veterans.

3. Administrator's Decision No. 513 is affirmed. (Opinion of the Solicitor, dated February 7, 1947, approved February 14, 1947.)

This decision is hereby promulgated for observance by all officers and employees of the Veterans Administration.

/s/ Omar N. Bradley, General, U. S. Army,
Administrator of Veterans Affairs

(Exhibit to Defendant's Answer to Interrogatory No. 38.)

§8.26 Dividends. A National Service life insurance policy shall participate in and receive such dividends from gains and savings as may be determined by the Administrator of Veterans' Affairs. Any such dividends shall be paid in cash except that at the written request of the insured they may be

left to accumulate on deposit provided the policy is in force on a basis other than extended term insurance or level premium term insurance. Payment of dividends shall be without interest except when left to accumulate on deposit in accordance with the insured's written request. Interest on dividend accumulations will be credited annually at such rate as the Administrator may determine. Dividend accumulations and unpaid dividends shall not be available for the payment of insurance premiums except at the written request of the insured made before default in payment of a premium. Any unpaid dividend on a lapsed policy will be paid in cash to the insured, if living, otherwise to his estate. Dividend accumulations will be used in addition to the reserve on the policy for the purpose of computing the period of extended term insurance or the amount of paid-up insurance as provided in §§8.29(a) and 8.30, respectively. Upon maturity of the policy, any dividend accumulations not previously withdrawn and any unpaid dividends will be payable in cash to the person currently entitled to receive payments under the policy.

(Sec. 602, 54 Stat. 1009, as amended; 38 U.S.C. and Sup. 802)

§8.26a Special dividends. Any Special National Service life insurance dividend that may be declared shall be paid in cash only. Such special dividends shall not be accepted to accumulate on deposit. Unpaid special dividends shall not be available to pay premiums.

(Sec. 313, 60 Stat. 789; 38 U.S.C. 512d) (14 F.R. 2832, May 28, 1949)

[Printer's Note: Interrogatory signed by Lawrence A. Schei for White, Harber & Schei, Attorneys for Plaintiff.]

[Endorsed]: Interrogatories Filed Nov. 8, 1951.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION OF MYRON L. KERN

Now comes the defendant and answering the Complaint in Intervention of plaintiff in Intervention Myron L. Kern defendants admits, denies and alleges as follows:

First Defense

That the Complaint in Intervention fails to state a claim against the defendant upon which relief can be granted.

Second Defense

That the court is without jurisdiction to hear and determine the cause of action alleged herein since it is one for recovery of special dividends and not cognizable under Section 617 of the National Service Life Insurance Act of 1940, as amended (Section 817 of Title 38 U.S.C.A.)

Third Defense

That there is no disagreement between the plain-

tiff in intervention and the Veterans Administration with respect to the special dividends payable under his policy of National Service Life Insurance, which may be made the basis for the assumption by the court of jurisdiction of this suit under Section 817 of Title 38 U.S.C.A.

Fourth Defense

For answer to the allegations in the several paragraphs in plaintiff in intervention's complaint in intervention, the defendant says:

I.

It is denied that this action is maintainable under Sections 801 to 818 of Title 38 U.S.C.A.

II.

The allegations of paragraph II are admitted.

III.

The allegations of paragraph III are admitted.

IV.

The allegations of paragraph IV are denied. As a further answer thereto, the defendant says that pursuant to the authorization contained in Section 602(f) of the National Service Life Insurance Act, as amended (Section 802(f) of Title 38 U.S.C.A.), the Administrator of Veterans Affairs on January 16, 1950, officially declared and established the basis for computing the special dividends to be paid upon certain specific policies of National Service Life Insurance.

V.

The allegations of paragraph V are denied. Fur

ther answering, the defendant says that the plaintiff in intervention furnished to the Veterans Administration, on the form provided therefor, all the information requested of him by the Veterans Administration as a basis for consideration of his entitlement to special dividends.

VI.

The allegations of paragraph VI are denied. Further answering, the defendant says that the Veterans Administration determined that the plaintiff in intervention's \$10,000.00 policy of National Service Life Insurance was entitled to participation in the special dividends to the extent of \$396.00, but that payment of the full amount of the said dividends could not lawfully be made because of the fact that the plaintiff in intervention was, at that time, indebted to the United States in the sum of \$302.06, as will more fully hereinafter appear; and further answering, the defendant says that a check in the amount of \$93.94 was mailed to the said plaintiff in intervention representing the full amount of the dividends payable to him after deducting the amount of the indebtedness he owed the United States.

VII.

The allegations of paragraph VII are denied. Further answering paragraph VII of the said complaint in intervention, defendant denies that the plaintiff in intervention was notified on April 7, 1950, or any other date, that said plaintiff in intervention's claim for dividends was approved in part

and denied in part, but states the facts to be that the said plaintiff in intervention was, on or about April 7, 1950, forwarded a dividend statement showing that dividends in the amount of \$396.00 had accrued under the plaintiff in intervention's National Service Life Insurance policy, and that a charge had been entered against the amount payable as dividends in the sum of \$302.06, leaving a net balance of \$93.94 for which check was enclosed; and further answering paragraph VII, defendant says that the sum of \$302.06 which was shown on said statement as a charge against dividends payable under the insurance, arose in this manner: On December 14, 1941 two months subsequent to the said plaintiff in intervention's entry into the service, he made two separate applications in writing to the Veterans Administration for the protection of policy No. 428 642 and policy No. 395 773 issued upon the life of the plaintiff in intervention by the California Western States Life Insurance Company in the face amounts of \$2000.00 and \$3000.00, respectively, as provided by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1183-86); that the Veterans Administration processed said applications in all respects as provided by law and the regulations issued pursuant thereto by the Administrator of Veterans Affairs and that the said applications were approved and both the insurer and the plaintiff in intervention so notified on or about January 12, 1942.

That thereupon the defendant guaranteed the payment to the insurer California Western States

Life Insurance Company of such premiums as were not paid by the insured during the period of coverage which extended from the date of said applications until one year after the termination of plaintiff in intervention's military service; that on October 6, 1942 Public Law 732, 77th Congress, was approved by the President, and pursuant thereto the period of coverage and protection afforded commercial insurance policies under the Soldiers' and Sailors' Civil Relief Act of 1940 was extended to include the period terminating two years subsequent to discharge of an insured from service.

That upon learning of the separation of the plaintiff in intervention from military service, as of February 8, 1946, the Veterans Administration on June 1, 1946 dispatched to him a letter (V.A. Form F.L. 9-63), wherein the insured's right to terminate this protection being afforded his insurance was made clear; that he was further advised in the said letter that any premiums not paid by him covering the period of protection would, upon an accounting, become an indebtedness which he would owe the insurance company, subject to any credit allowed by the company for the then cash value of the policies; that the Government guaranteed the payment of this amount to the insurance company and that any amount not paid by him to the insurer would be paid by the United States "to whom you will then owe whatever payment the Government made on your account"; that on February 8, 1948, the Veterans Administration terminated the protection, as provided by law, and thereupon the California

Western States Life Insurance Company rendered its report showing that premiums had accrued during the period of coverage in the amount of \$1143.68, no part of which had been paid, and that after crediting the cash surrender value of the policies (\$811.62) an unpaid balance of \$332.06 remained which was subject to payment by the Government; that after the customary audit of the insurer's account, the Veterans Administration approved an award in its favor in the amount of \$332.06 in payment of which D. O. Voucher No. 1762273 dated May 13, 1948 was dispatched.

That plaintiff in intervention was duly notified of the said award and payment to the insurer and that the amount paid by the United States represented a debt due by him to the Government; that on or about October 23, 1948 the insured advised the Veterans Administration that "the payment of the total of subject indebtedness (\$332.06) definitely imposes a hardship upon me"; that said plaintiff in intervention further advised he had been informed by the local San Francisco, California Veterans Administration office that monthly payments in the amount of \$5.00 until such time as he could increase such payments would be acceptable; that thereafter said plaintiff in intervention transmitted in the form of such payments the total sum of \$30.00 and no more; that said plaintiff in intervention made no further payments and thereafter the insured was notified that a deduction in the amount of \$302.06 had been made from his National Service Life Insurance dividends and that

his indebtedness to the United States because of protection afforded his commercial life insurance policies under the Soldiers' and Sailors' Civil Relief Act was thereby liquidated.

Further answering, the defendant says that all of its actions aforesaid, and particularly the application of the sum of \$302.06 payable to the said plaintiff in intervention as special dividends under his National Service Life Insurance policy to the said plaintiff in intervention's indebtedness to the United States in like amount for the protection afforded, at plaintiff in intervention's request, under the Soldiers' and Sailors' Civil Relief Act of 1940, and amendments thereto, was fully authorized by law, and that it owes the said plaintiff in intervention nothing.

VIII.

The allegations of paragraph VIII are denied.

IX.

The allegations of paragraph IX are denied.

X.

The allegations of paragraph X are denied. In further answer thereto, the defendant says that it has fully discharged its obligation to the said plaintiff in intervention with respect to the special dividends payable under his policy of National Service Life Insurance and has fully paid to him all dividends to which he was lawfully entitled.

Wherefore, having fully answered, the defendant

prays that the said plaintiff in intervention take nothing by this action and that judgment be entered for the defendant and against the said plaintiff in intervention with costs, and for such other and further relief as may to the court seem just and proper.

Dated: December 1st, 1952.

—CHAUNCEY TRAMUTOLO,

United States Attorney

/s/ By WM. H. LALLY,

Assistant U. S. Attorney

[Endorsed]: Filed December 1, 1952.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION OF JAMES E. MABBUTT

Now comes the defendant and answering the Complaint in Intervention of plaintiff in Intervention James E. Mabbutt defendant admits, denies and alleges as follows:

First Defense

That the Complaint in Intervention fails to state a claim against the defendant upon which relief can be granted.

Second Defense

That the court is without jurisdiction to hear and determine the cause of action alleged herein since it is one for recovery of special dividends and not

cognizable under Section 617 of the National Service Life Insurance Act of 1940, as amended (Section 817 of Title 38 U.S.C.A.)

Third Defense

That there is no disagreement between the plaintiff in intervention and the Veterans Administration with respect to the special dividends payable under his policy of National Service Life Insurance, which may be made the basis for the assumption by the court of jurisdiction of this suit under Section 817 of Title 38 U.S.C.A.

Fourth Defense

For answer to the allegations in the several paragraphs of plaintiff in intervention's complaint in intervention, the defendant says:

I.

It is denied that this action is maintainable under Sections 801 to 818 of Title 38 U.S.C.A.

II.

The allegations of paragraph II are admitted.

III.

The allegations of paragraph III are admitted.

IV.

The allegations of paragraph IV are denied. As a further answer thereto, the defendant says that pursuant to the authorization contained in Section 602(f) of the National Service Life Insurance Act, as amended (Section 802(f) of Title 38 U.S.C.A.), the Administrator of Veterans Affairs on January 16, 1950, officially declared and established the basis

for computing the special dividends to be paid upon certain specific policies of National Service Life Insurance.

V.

The allegations of paragraph V are denied. Further Answering, the defendant says that the plaintiff in intervention furnished to the Veterans Administration, on the form provided therefor, all the information requested of him by the Veterans Administration as a basis for consideration of his entitlement to special dividends.

VI.

The allegations of paragraph VI are denied. Further answering, the defendant says that the Veterans Administration determined that the plaintiff in intervention's \$10,000.00 policy of National Service Life Insurance was entitled to participation in the special dividends to the extent of \$352.00, but that payment of the full amount of the said dividends could not lawfully be made because of the fact that the plaintiff in intervention was, at that time, indebted to the United States in the sum of \$205.75, as will more fully hereinafter appear; and further answering, the defendant says that a check in the amount of \$146.25 was mailed to the said plaintiff in intervention representing the full amount of the dividends payable to him after deducting the amount of the indebtedness he owed the United States.

VII.

The allegations of paragraph VII are denied.

Further answering paragraph VII of the said complaint in intervention, defendant denies that the plaintiff in intervention was notified on May 26, 1950, or any other date, that said plaintiff in intervention's claim for dividends was approved in part and denied in part, but states the facts to be that the said plaintiff in intervention was, on or about May 26, 1950, forwarded a dividend statement showing that dividends in the amount of \$352.00 had accrued under the plaintiff in intervention's National Service Life Insurance policy, and that a charge had been entered against the amounts payable as dividends in the sum of \$205.75, leaving a net balance of \$146.25 for which check was enclosed; and further answering paragraph VII, defendant says that the sum of \$205.75 which was shown on said statement as a charge against dividends payable under the insurance, arose in this manner: On March 4, 1941, one day subsequent to the said plaintiff in intervention's entry into the military service, he made application in writing to the Veterans Administration for the protection of policy No. 420558 issued upon the life of the plaintiff in intervention by the California Western States Life Insurance Company in the face amount of \$2500.00 as provided by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1183-86); that the Veterans Administration processed said application in all respects as provided by law and the regulations issued pursuant thereto by the Administrator of Veterans Affairs, and that the said application was approved

and both the insurer and the plaintiff in intervention so notified on or about January 20, 1941.

That thereupon the defendant guaranteed the payment to the insurer California Western States Life Insurance Company of such premiums as were not paid by the insured during the period of coverage which extended from the date of said application until one year after the termination of plaintiff in intervention's military service; that on October 6, 1942 Public Law 732, 77th Congress, was approved by the President, and pursuant thereto the period of coverage and protection afforded commercial insurance policies under the Soldiers' and Sailors' Civil Relief Act of 1940 was extended to include the period terminating two years subsequent to discharge of an insured from service.

That after the separation of the said plaintiff in intervention from military service, as of December 25, 1945, and on or about February 7, 1947 said plaintiff in intervention and said insurer signed and forwarded to the Veterans Administration an application (V.A. Form 9-313 May 1946) for withdrawal of said above described policy from the protection of the Soldiers' and Sailors' Civil Relief Act and in said application for withdrawal said plaintiff in intervention and said insurer agreed as a condition to said withdrawal that the insurance under the above described policy would be terminated effective as of February 22, 1947.

That upon the termination of said protection and the termination of said policy as requested in said application and agreed upon between said plaintiff

in intervention and said insurer the said insurer, the California Western States Life Insurance Company rendered its report showing that premiums had accrued during the period of coverage in the amount of \$269.25, no part of which had been paid, and that after crediting the cash surrender value of the policy (\$63.50) an unpaid balance of \$205.75 remained which was subject to payment by the Government; that after the customary audit of the insurer's account, the Veterans Administration approved an award in its favor in the amount of \$205.75 in payment of which D.O. Voucher No. 267927 dated April 10, 1947 was dispatched.

That plaintiff in intervention was duly notified of the said award and payment to the insurer and that the amount paid by the United States represented a debt due by him to the Government.

That on or about May 26, 1950 the insured was notified that a deduction in the amount of \$205.75 had been made from his National Service Life Insurance dividends and that his indebtedness to the United States because of protection afforded his commercial life insurance policy under the Soldiers' and Sailors' Civil Relief Act was thereby liquidated.

Further answering, the defendant says that all of its actions aforesaid, and particularly the application of the sum of \$205.75 payable to the said plaintiff in intervention as special dividends under his National Service Life Insurance policy to the said plaintiff in intervention's indebtedness to the United States in like amount for the protection afforded, at plaintiff in intervention's request, under

the Soldiers' and Sailors' Civil Relief Act of 1940, and amendments thereto, was fully authorized by law, and that it owes the said plaintiff in intervention nothing.

VIII.

The allegations of paragraph VIII are denied.

IX.

The allegations of paragraph IX are denied.

X.

The allegations of paragraph X are denied. In further answer thereto, the defendant says that it has fully discharged its obligation to the said plaintiff in intervention with respect to the special dividends payable under his policy of National Service Life Insurance and has fully paid to him all dividends to which he was lawfully entitled.

Wherefore, having fully answered, the defendant prays that the said plaintiff in intervention take nothing by this action and that judgment be entered for the defendant and against the said plaintiff in intervention with costs, and for such other and further relief as may to the court seem just and proper.

Dated: December 1st, 1952.

CHAUNCEY TRAMUTOLO,

United States Attorney

/s/ By WM. H. LALLY,

Assistant U. S. Attorney

[Endorsed]: Filed December 1, 1952.

[Title of District Court and Cause.]

OPINION AND ORDER

No other country in the world has been so generous as the United States in the treatment of its service men and veterans. In the instant case, however, the plaintiffs are asking the Court to assist them in collecting from the Government sums that are not warranted by the National Service Life Insurance Act or the Civil Relief Act.

The plaintiffs contend that applicants for Government protection of their premium payments to insurance companies did not expect to reimburse the United States for that protection. In the plaintiffs' own pungent phrase, they expected the Government "to give them a free ride in their private insurance".

In the very first of the "General Provisions" of the Civil Relief Act, however, we are told that the "Purpose" of the statute is to "suspend enforcement of civil liabilities" of military personnel. Further on in the same section, we are again told that provisions are made "for the temporary suspension of legal proceedings and transactions" affecting service men. This opening section seems to have escaped the notice of counsel. 50 USCA App. Section 510.

Coming as they do at the very threshold of the statute, these Congressional declarations tincture the entire enactment. Every article, every section, every paragraph, every sentence is tinged with this "tem-

porary suspension" hue—unless a contrary legislative intent is plainly shown.

No such contrary intent has been even intimated in any of the sections pertinent to the present lawsuit.

1. Statement of the Case:

The original complaint was filed by the plaintiff Plesha. Complaints in intervention were filed by Mabbutt and Kern. The three pleadings were brought under the National Service Life Insurance Act of 1940 (38 USCA Sections 801-818). It is sought to recover amounts withheld by the defendant from a "special dividend" declared by the Administrator of Veterans' Affairs, alleged to be due each plaintiff on his policy of National Service Life Insurance, hereinafter referred to as "insurance".

Inter alia, it is alleged that each plaintiff made claim for all money alleged to be due him under that dividend; that each claim was approved in part and denied in part; that the partial denial "was without legal cause or justification"; and that there is a disagreement as to each such claim, within the meaning of 38 USCA Section 817.

The defendant has set up three principal defenses:

1. That the complaint fails to state a claim upon which relief can be granted.

2. That the Court is without jurisdiction of the cause of action, because it is not cognizable under 38 USCA Sections 445 and 817, and the defendant has not otherwise consented to be sued with respect to insurance; and because there is no disagreement

between the parties as to any claim under the insurance policies involved.

3. That the defendant has paid the full amount of all special dividends herein sued for, in cash or by applying them in repayment of the insured's debt to the defendant arising out of its payment to the insurer.

The case was tried to the Court without a jury.

3. The Questions Presented:

The questions presented are the following:

1. Does the complaint state a cause of action within the jurisdiction of this Court?

2. Are the plaintiffs entitled to recover the amount of special dividends from the defendant?

4. The Court Has Jurisdiction of this Action:

The defendant contends that "This action is not within the consent provisions of 817, 38 U.S.C.A."

Section 817 reads as follows:

"In the event of disagreement as to any claim arising under this chapter, suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to the United States Government life (converted) insurance under the provisions of sections 445 and 551 of this title."

The defendant argues that "Although the right to receive the Special Dividend in suit may have arisen out of, or by reason of, the contract of insurance, the United States did not by the contract undertake in all events to pay a policyholder a dividend". Reliance is placed upon the case of *Candell vs. United States*, 10 Cir., 1951, 189 F.2d 442, 444,

in which the Court construed Section 19 of the World War Veterans' Act, 1924, as amended, 38 USCA Section 445, which contains the following provision:

"The term 'claim' as used in this section, means any writing which alleged permanent and total disability at a time when the contract of insurance was in force, or which uses words showing an intention to claim insurance benefits, * * *." (Emphasis supplied.)

Regarding the above excerpt, the Court in the Candell case said:

"An insurance benefit means money or its equivalent paid as indemnity for a loss insured against. A dividend upon a National Service Life Insurance policy is paid under the terms of the contract which gives the insured the right to participate in gains and savings of the National Service Life Insurance Fund as they may be determined by the Administrator. Such a dividend is a return of premium. Such a dividend has no relation to the obligation to pay indemnity on the happening of the loss insured against."

With all due respect to the highest Federal Court in a sister circuit, this Court is unable to agree with the construction placed upon the word "insurance benefit". In 38 USCA Section 454a, which is a part of the very statute that the Court in the Candell case was construing, we find a reference to "overpayments of dividends, refunds, loans, or other insurance benefits." (Emphasis supplied.)

That Congress intended that the courts should have the right of review over the decisions of the Administrator of Veterans' Affairs on insurance matters generally was clearly brought out in *United States vs. Zazove*, 1948, 334 U.S. 602, 611-612:

"On the other hand, we think it clear that an administrative regulation purporting to construe an ambiguous subsection of the National Life Insurance Act of 1940 is not automatically to be deemed valid merely because not plainly interdicted by the terms of the particular provision construed. The Administrator's general rule-making power, * * * is limited by the statute to 'such rules and regulations, not inconsistent with the provisions of this chapter, as are necessary or appropriate to carry out its purposes * * *'. Moreover, a 1946 amendment to Section 608, designed to eliminate the finality of the decisions of the Administrator on insurance matters, amended the last sentence of Section 608 to add the words set out in italics:

"'Except in the event of suit as provided in section 617 hereof, *or other appropriate court proceedings*, all decisions rendered by the Administrator under the provisions of this Act, or regulations *properly* issued pursuant thereto, shall be final and conclusive on all questions of law or fact, and no other official of the United States, *except a judge or judges of United States courts*, shall have jurisdiction to review any such decisions.'

The extension of procedures available to secure judicial review, the interpolation of the word 'prop-

erly', and the addition, presumably out of an abundance of caution, of the tautological phrase 'except a judge or judges of United States courts' are indicative of congressional concern that the regulations of the Veterans' Administration be subject to more than casual judicial scrutiny when they are based upon a controverted construction of the statute."¹

The defendant also contends that "The disagreement prerequisite to the jurisdiction of the court in an action brought under Sections 445 and 817, 38 U.S.C.A., does not exist in this case." It is asserted that the defendant has paid the dividend "to the use of each plaintiff by applying it to his indebtedness to the United States arising out of its payment * * * of insurance premiums" to the insurance company.

The plaintiffs, on the other hand, maintain "that when the Government paid only part of the dividend in cash, and exercised its claimed right of offset against the balance that (sic) it denied the claim, in part, as to such balance". In other words, the plaintiffs assert that they were not indebted to the defendant at all for the amounts so deducted, and that, even if they were so indebted, the defendant had no right of offset.

Indeed, the defendant itself has recently invoked the jurisdiction of a United States District Court in similar cases. See *United States vs. Nichols*, DC

¹ See also *United States vs. Roberts*, 5 Cir., 1951, 192 F.2d 893, 896-897; *Jensen vs. United States*, DC Utah, 1950, 94 F.Supp. 468, 470.

Iowa, 1952, 105 F.Supp. 543 (three separate actions).

The present suit is based upon "disagreement as to claim * * * under a contract of insurance" involving "insurance benefits", and therefore Section 445 is applicable. It is "a disagreement as to any claim arising under this chapter (providing for National Service Life Insurance)" and therefore Section 817, *supra*, is applicable.

Accordingly, the Court holds that it has jurisdiction of this cause.

5. The Defendant Was Entitled to Reimbursement of the Amounts Paid Out by It Under the Guaranties.

The central question in this litigation is whether the Relief Act of 1940, as originally enacted, imposed upon service men who put their private life insurance policies under the protection of that Act, a liability to repay the defendant for whatever the latter might have to disburse to the insurance companies under that statute.

This entire problem has been comprehensively discussed and, in this Court's view, has been correctly decided in two recent cases. The plaintiffs admit that both opinions are in point.

In *United States vs. Nichols*, *supra*, 105 F.Supp. at page 559, the Court thus summarized the situation:

"These defendants applied for protection of their insurance policies under the 1940 Act. As a result of the action of the United States in guaranteeing the payment of their defaulted premiums they re-

ceived insurance protection while in the military service and for a period thereafter. Such insurance protection was a benefit received by them for which they owed the insurance companies which had provided such insurance protection. The United States was required to pay their debts to such insurance companies. Under common law principles the United States would be entitled to reimbursement. The Court is of the view that neither the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 nor its legislative history are indicative of a Congressional intent to abrogate the common law right of the United States to reimbursement.

"It is the holding of the Court that the United States is entitled to reimbursement from the defendants in these cases."

Each of the three defendants in *United States vs. Nichols* appealed to the United States Court of Appeals for the Eighth Circuit. Each appeal was dismissed, "on dismissal of appeal filed by appellant". See 202 F.2d 956, 958.

The plaintiffs argue that "the provisions of Section 408 of the original (1940) Act giving the United States a first lien on the policy 'to indemnify it against loss' and the provisions in Sections 409, 410 and 411 for application of the cash surrender value of lapsed policies against the Government's obligation are inconsistent with the assertion of any further right of indemnification, implied or otherwise".

A similar argument was made by the plaintiff in *Morton vs. United States*, DC N.Y., 1953, 113

F.Supp. 496, 500. There it was contended that "because the 1940 version of the statute contemplated reimbursement to the Government only to the extent that the cash surrender value of a given policy was sufficient, it necessarily follows that the Government would have to bear any loss occasioned by a deficiency when the cash surrender value was measured against the Government's outlay."

While recognizing that "this argument is not lacking in plausibility", the Court observed:

"It is thought, however, that the answer lies in the realization that if it be allowed to prevail, there would necessarily be imputed to Congress an intention to make a gift to the holders of private insurance of any deficiency so arising, which would clearly indicate a legislative purpose to distribute treasury funds to a selected group among those who were called into the military service of the nation, because manifestly a considerable element would not have been able to provide themselves with private insurance policies, and therefore it seems that if the choice must be made between attributing to Congress a purpose to reimburse the Government eventually for funds advanced in the payment of premiums from any source whatever, and the discriminatory source of reimbursement which the plaintiff urges it must be concluded that the intention was not to make a gift in whole or in part of money to only holders of private life insurance policies."

The defendant avers—and its statement is not challenged here—that "the cases here under con-

sideration are but three of hundreds, and perhaps thousands, which involve application of the basic principles announced in (such) Administrator's decisions."

In the absence of a definite Congressional mandate, this Court is not prepared to assist in this latest attempt to siphon off some more of this nation's already fast-ebbing public fisc.

6. The Defendant Had the Right to Offset Any Dividends Payable Against the Plaintiffs' Indebtedness Arising Under the Relief Act.

One point related to this case not covered in the Nichols and the Morton cases; *supra*, is that which deals with the defendant's right to offset any dividends against the plaintiffs' debt arising from their failure to pay the premiums on their protected private policies. This question was not involved in the Nichols case, and in the Morton case the plaintiff admitted the defendant's right to offset National Service Life Insurance dividends in payment of debts owed to the United States.

The plaintiffs assert that "Section 454a of Title 38, U.S.C.A. * * * prohibits the collection by set-off or otherwise out of any veterans' benefits, including 'dividends * * * or other insurance benefits,' of any claim of the United States against the veteran 'except amounts due the United States by such beneficiary * * * by reason of overpayments or illegal payments made under such laws relating to veterans, to such beneficiary * * *'"

At the outset, it will be helpful if there is cleared away a fallacy under which the plaintiffs seem to

be laboring. They suggest that the Relief Act of 1940 "is not 'a law relating to veterans,' but one relating to persons on active military duty. If this is correct payments or overpayments under that Act were not 'overpayments * * * made under * * * laws relating to veterans.'"

If the World War Veterans' Act of 1924, of which Section 454a is a part, does not apply to persons on active military duty so far as the exception to the general exemption is concerned, by the same reasoning it does not apply to the exemption itself. Both the exemption and the exception thereto are part and parcel of the identical provision. Section 454a reads in part as follows:

"From and after October 17, 1940, this section shall be construed to prohibit the collection by set-off or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and relating to veterans, * * * of any claim of the United States or any agency thereof against * * * (b) any beneficiary * * * except amounts due the United States by such beneficiary * * * by reason of overpayments or illegal payments made under such laws relating to veterans, * * *: Provided, however, That if the benefits be insurance payable by reason of yearly renewable term or of United States Government life (converted) insurance issued by the United States, the exemption herein provided shall be inapplicable to indebtedness existing against the particular insurance contract upon the maturity of which the claim

is based, whether such indebtedness be in the form of liens to secure unpaid premiums, or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits: * * * (Emphasis supplied.)

From the foregoing, it will be seen that the general exemption applies only to "benefits payable pursuant to any law administered by the Veterans' Administration AND relating to veterans," etc. If the plaintiffs are not "veterans" within the meaning of Section 454a, they cannot enjoy this exemption from "collection by set-off". If so, there is no need of resorting to the exception (to the exemption) urged by the defendant.

Indeed, it is only when an applicant for benefits under the Relief Act of 1940 survives active military service—and thus becomes a "veteran"—that the defendant's guaranty becomes actually effective. When the insured dies while still in military service, "the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy," etc. (50 USCA App. Section 549, Page 623, "Historical Note") In the latter event, there is no longer need for a guaranty.

When the defendant paid the plaintiffs' premiums and the plaintiffs failed to reimburse the defendant, there resulted, in effect, an "overpayment" to the plaintiffs within the meaning of Section 454a of 38 USCA.

In Administrator's Decision No. 742, dated April

1, 1947, General Omar N. Bradley quoted with approval the following language found in Administrator's Decision No. 607, dated November 24, 1944:

"It has consistently been held in construing this specific language that anything of value which a veteran secures under color of the laws relating to veterans and to which he is not specifically entitled by such laws is an overpayment within the meaning of the statute * * *"

General Bradley continued:

"As said in Administrator's Decision No. 607, if the Government pays a veteran's obligation pursuant to law and the veteran refuses to pay the debt therefrom arising, he is in a very real sense overpaid and there is an overpayment within the meaning of the exemption statute, supra, 38 U.S.C.A. 454(a)."

In *United States vs. Citizens Loan & Trust Co.*, 1942, 316 U.S. 209, 214, the Court said, referring to a holding of the Veterans' Administration:

"This administrative interpretation over a period of 17 years, controlling the settlement of thousands of cases, is entitled to great weight, and such construction is not to be overturned unless clearly wrong, or unless a different construction is plainly required.' *United States vs. Jackson*, 280 U.S. 183, 193."

Furthermore, it is the opinion of this Court that the Administrator's construction was a reasonable one. The sovereign's right to a fair offset should not be lightly disregarded. Certainly that right is at

least equal to that of a private suitor, unless unequivocally curtailed by statute.

In *United States vs. Munsey Trust Co.*, 1947, 332 U.S. 234, 239, the Court said:

"The government has the same right 'which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him,' " (Cases cited.)

Both on reason and authority, therefore, this Court is of the opinion that the defendant was correct in offsetting any dividends payable against the plaintiffs' indebtedness arising under the Relief Act of 1940.

Certain subordinate points raised by the plaintiffs, such as the intention of Congress not to "increase" the "liability" of servicemen when it enacted the Civil Relief Amendments of 1942, have been carefully considered by the Court, and have been found to contain no merit.

7. Conclusion:

Accordingly, it is the judgment of this Court that the premiums and the interest paid to the insurer by the defendant at the plaintiffs' request constituted a debt due by them to the said defendant; and that the latter had the right to offset any payable dividends against such indebtedness of the plaintiffs. The defendant will lodge appropriate proposed findings of fact and conclusions of law.

Dated: December 23, 1953.

/s/ DAL M. LEMMON,

United States District Judge

[Endorsed]: Filed December 23, 1953.

In the District Court of the United States, Northern
District of California, Northern Division

Civil Action No. 6326

PAUL E. PLESHA, Plaintiff,
JAMES E. MABBUTT, MYRON L. KERN,
Plaintiffs in Intervention,
vs.
UNITED STATES OF AMERICA, Defendant.

JUDGMENT.

The above-entitled action having been heretofore tried to and submitted to the Court, said action was taken under advisement and counsel for the respective parties were requested to file briefs. Having fully considered the pleadings, the evidence, the briefs filed by counsel, and after being fully advised in the premises, the Court made findings of fact and conclusions of law which were entered and filed with the Clerk of this court on March 16, 1954.

On this 16 day of March, 1954, upon said findings of fact and conclusions of law, It Is Hereby Ordered, Adjudged and Decreed That Plaintiffs have and recover nothing in this action; that the relief prayed for in plaintiffs' complaint be and the same is hereby denied; and It Is Further Ordered and Adjudged that defendant have judgment for its costs herein taxed.

/s/ **DAL M. LEMMON,**

United States District Judge

[Endorsed]: Judgment Entered and Filed March—
16, 1954.

[Title of District Court and Cause.]

ORDER ADMITTING EVIDENCE

The above entitled action, having been heretofore tried to and submitted to the Court and certain evidence having been offered by plaintiffs and defendant having objected to the receipt of such evidence and the Court having reserved its ruling on the admissibility of such evidence, and the matter of the admissibility of such evidence having been duly considered by the Court:

It Is Hereby Ordered that all of the evidence offered by plaintiffs, as well as all of the evidence offered by defendant, be and the same is admitted into evidence.

This order shall be effective as of December 23, 1953, the date the opinion and order of this Court was filed with the Clerk of this Court.

Dated, March 25, 1954.

/s/ DAL M. LEMMON,

United States District Judge

[Endorsed]: Filed March 25, 1954.

[Title of District Court and Cause.]

AMENDED FINDINGS OF FACT

In the above entitled action the Court hereby amends its Findings of Fact, filed on March 16, 1954, so as to read as follows:

1. The court finds that on March 5, 1941, two days subsequent to his entry into the service, Plaintiff Paul E. Plesha made application in writing to the California-Western States Life Insurance Company as then provided by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1183-86), for the protection of policy No. 419814 in the face amount of \$2,500.00 issued upon his life by said company effective December 6, 1940. Following report by said company to the Veterans Administration of the filing of said application, the Veterans Administration approved plaintiff's request for coverage as to all premiums becoming due on and after March 6, 1941, and both the company and the plaintiff were so notified on or about June 20, 1941.

2. The court finds that the plaintiff was separated from military service on October 20, 1945, but did not notify the Veterans Administration thereof; that on November 14, 1946, the Veterans Administration, having learned of his separation, dispatched to him a form letter (VA Form FL 9-63), wherein he was advised (a) that he might terminate the protection being afforded his insurance or continue such protection until two years after his discharge date; (b) that any premiums accruing but not paid by him during the period of protection would, upon an accounting, become an indebtedness which he would owe the insurance company, subject to any credit allowed by the company for the then cash-value of the policy; and (c) that the Government guaranteed the payment of this amount to the in-

surance company and that any amount not paid by him to the insurer would be paid by the United States "to whom you will then owe whatever payment the Government made on your account."

3. The court finds that at the end of the two-year period following discharge, on October 20, 1947, the Veterans Administration, having heard nothing further from plaintiff, terminated the protection and the California Western States Life Insurance Company then rendered its report showing that premiums and interest at 6 per cent per annum, compounded annually, which was the interest rate on policy loans specified in plaintiff's policy, with said insurance company, had accrued during the period of coverage in the amount of \$343.93, no part of which had been paid, and that after crediting the cash surrender value of the policy (\$82.88), an unpaid balance of \$261.05 remained which was subject to payment by the plaintiff or the Government; that after the customary audit of the insurer's account, the Veterans Administration approved an award in its favor in the amount of \$261.05, in payment of which United States Treasury Check No. 59,311,294, dated January 2, 1948, was dispatched to said company.

4. That on to wit, February 13, 1948, the plaintiff was duly notified of the said award and payment to the insurer and was notified that the amount paid by the United States represented a debt due by him to the Government; that on or about March 11, 1948, the insured advised the Veterans Administration that he was not in a position at that time to

make payment and requested information as to what mode of payment he might avail himself of "in order to take care of this obligation"; that, after further exchange of correspondence, the insured was advised on August 10, 1948, that he could discharge this obligation by initially making payments of \$10.00 per month, the payments to be increased as his financial condition improved "in order to liquidate the entire indebtedness within the allotted time of approximately one year"; that the plaintiff accepted said plan of repayment by forwarding three checks aggregating \$40.00 which were duly credited by the Veterans Administration; however, plaintiff made no further payments and there remained outstanding and unpaid the sum of \$221.05.

5. The court finds that the plaintiff filed application with the Veterans Administration for the special dividend payable with respect to National Service Life Insurance in force prior to the anniversary date in 1948; that the Veterans Administration determined, subsequent to January 16, 1950, that the plaintiff's \$10,000 policy of National Service Life Insurance was entitled to participate in such special dividend to the extent of \$233.75, but withheld payment of \$221.05 of the said dividends because of the fact that it had also determined that the plaintiff was, at that time, indebted to the United States in such amount for protection afforded his commercial insurance policy as aforesaid.

6. The court finds that on February 17, 1950, the plaintiff was notified by the Veterans Administra-

tion that a deduction in the amount of \$221.05 had been made from special National Service Life Insurance dividends otherwise payable to him and that his indebtedness to the United States because of protection afforded his commercial life insurance policy under the Soldiers' and Sailors' Civil Relief Act, was thereby liquidated. The Veterans Administration thereafter and prior to the institution of this suit paid plaintiff the unpaid balance of special dividend in the amount of \$12.70.

7. The court finds that plaintiff, although advised of the computation and payment of the indebtedness, as aforesaid, did not at any time prior to filing this action protest the correctness thereof and payment by the Veterans Administration to the California-Western States Life Insurance Company of the sum of \$261.05, as premiums and accrued interest at the policy loan rate, which accrued during the period his policy was under protection afforded by the Soldiers' and Sailors' Civil Relief Act of 1940, and the amendatory Act of October 6, 1942.

8. The court finds that on March 4, 1941, one day subsequent to his entry in the service, Intervenor James E. Mabbutt made application to the California-Western States Life Insurance Company for the protection of policy No. 420,558 issued upon his life by said company effective December 12 1940, in the face amount of \$2,500.00, on the Ordinary Life plan, with annual premium of \$36.35; that said company reported said application on March 12, 1941, to the Veterans Administration,

and on June 20, 1941, the Veterans Administration approved said application effective with the annual premium due March 12, 1941, and notified both the said Intervenor and the insurer.

9. The court finds that following the said Intervenor's separation from the service on December 25, 1945, coverage of his policy was terminated by the Veterans Administration effective February 22, 1947, at the request of the said Intervenor and said company; that the company reported that unpaid premiums and interest at the policy loan rate of 6 per cent compounded annually on the Intervenor's account totaled \$269.25, with credit of \$63.50, representing the cash-surrender value of the policy to date of termination of coverage; that the net amount due the insurer by the United States pursuant to its guaranty was \$205.75; that on April 4, 1947, both the said Intervenor and the company were notified of the approval of an award to said company in said sum of \$205.75; that payment of said sum was made by the United States to the said company pursuant to said award, and this Intervenor has never questioned the correctness of said award and the payment made by the United States to said company on his account.

10. The court finds that on, to-wit April 22, 1947, the said Intervenor was notified, by Veterans Administration Form Letter FL 4-62, that the company had been paid the amount theretofore awarded and was notified that the amount paid by the Government represented a debt due by him to the United States which should be promptly remitted;

that on April 29, 1949, said Intervenor was again requested to pay the amount paid the company by the Government, but failed to make any response in respect thereto.

11. The court finds that the above Intervenor filed application for special dividend, above-referred to, on Veterans Administration Form 9-430, June 1949, and that it was thereafter determined by the Veterans Administration that the Intervenor's National Service Life Insurance was entitled to participate in special dividend payable with respect to insurance in effect prior to 1948 to the extent of \$352.00.

12. The court finds that the Veterans Administration thereupon deducted the sum of \$205.75 from special National Service Life Insurance dividend, which otherwise would have been payable to the Intervenor as aforesaid, applied said amount in liquidation of the Intervenor's indebtedness to the United States, and on or about May 26, 1950, remitted to the Intervenor the balance of \$146.25 payable as such dividend.

13. The court finds that in arriving at the amount due as between the United States and the California-Western States Life Insurance Company for the protection afforded as aforesaid, unpaid premiums with interest at the policy loan rate, to-wit 6 per cent per annum payable in advance, were used as the base figures against which cash surrender value of said policy was credited.

14. The court finds that on to-wit, December 14, 1941, Intervenor Myron L. Kern made application

in writing to the California-Western States Life Insurance Company for protection of policy No. 428,642, in the face amount of \$3,000.00, issued by said company, effective June 23, 1941, and policy No. 395,773 in the face amount of \$2,000.00 issued by said company effective December 21, 1938; that following report of said applications by the company on to-wit, December 22, 1941, the Veterans Administration notified both said company and Intervenor Kern on January 12, 1942, of the approval of said applications effective with annual premiums due June 23, 1942, and December 21, 1941, respectively; that on to-wit, December 13, 1943, Intervenor Kern advised the Veterans Administration, in effect, that he had decided to pay the premiums on account of his said private insurance himself, and requested information as to any papers necessary to be executed, and as to "what options I may have to repay the Government for those premiums already paid by the Government on the above policies"; that he was advised in reply on December 24, 1943, that "as all premiums are to be paid direct to the insurance company when the insured is able to meet the premium payments" it was not necessary for any papers to be executed in order to resume payment of premiums. However, this Intervenor did not resume payment of such premiums and took no action to terminate the protection being afforded prior to February 8, 1948, when it was terminated by the Veterans Administration pursuant to Section 403 of the Act of October 6, 1942 (56 Stat. 773).

15. The court finds that following termination of said coverage, the California-Western States Life Insurance Company presented its statement of account, which indicated that as to policy No. 395,773 an aggregate of \$461.70 for unpaid premiums and interest at the policy loan rate of 6 per cent per annum accrued during the period of coverage, against which cash-surrender value of \$394.00 was applicable as credit, leaving a net amount due said company for such coverage of \$67.70; that as to policy No. 428,642 premiums and interest in the aggregate amount of \$681.98 had accrued, which was subject to credit of \$417.62 representing cash-surrender value, leaving a net amount due the said company for protection afforded thereunder during the period of coverage of \$264.36.

16. The court finds that on to-wit, April 19, 1948, payment was made by the Government to the California-Western States Life Insurance Company in the aggregate of the net sums above-stated, and that both said company and Intervenor Kern were notified of said award on said date.

17. The court finds that on September 22, 1948, Intervenor Kern was again advised of the award made and that payment had been made to the company; and was notified that the amount which had been paid to the company was a debt due by him to the United States; that on October 23, 1948, the insured wrote the Veterans Administration that payment of the total indebtedness (\$332.06) would impose a hardship upon him and requested that he be allowed to make payments at the rate of \$5.00

per month initially; that thereafter said Intervenor made payments in the total sum of \$30.00, thus reducing the balance to \$302.06.

18. The court finds that the above Intervenor at no time prior to the hearing of this case on January 23, 1953, either questioned the correctness of the award, or protested payment by the Veterans Administration to the California-Western States Life Insurance Company of the sum of \$332.06, as premiums and accrued interest at the policy loan rate, which accrued during the period the policy was under protection afforded by the Soldiers' and Sailors' Civil Relief Act of 1940, and the amendatory Act of October 6, 1942.

19. The court finds that the above Intervenor filed application for special dividend on Veterans Administration Form 9-430, June 1949, furnished him for the purpose by the Veterans Administration; that subsequently the Veterans Administration determined that his policy was entitled to participate in the special dividend declared with respect to National Service Life Insurance in effect prior to 1948 in the amount of \$396.00; that the Veterans Administration thereupon applied \$302.06 in payment of the balance found due by Intervenor for protection afforded his commercial policy as aforesaid; and that on or about April 7, 1950, check for \$83.94 was dispatched to the above Intervenor, and later, on to-wit June 7, 1950, additional check in the amount of \$10.00 was forwarded to him, as the balance of special National Service Life Insurance

dividend payable after deducting the sum of \$302.06 as above stated.

20. The court finds that, following passage of Public Law 732, 77th Congress on October 6, 1942 (56 Stat. 773), the California-Western States Life Insurance Company elected, pursuant to the privilege extended by Section 408(2) of said amendatory Act, to surrender to the United States all certificates theretofore issued pursuant to the provisions of Section 407 of the Act of October 17, 1940, and that thereafter settlement was made between the United States and the California-Western States Life Insurance Company as contemplated by said amendatory Act.

21. The court finds that the amounts withheld from the plaintiff and each of the intervenors in this case by the Veterans Administration from special National Service Life Insurance dividends, were applied by the Veterans Administration to the indebtedness to the Government as found by the Administrator of Veterans Affairs to exist on account of protection afforded said plaintiff and intervenors under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 and the amendatory Act of October 6, 1942.

22. The Court finds that, as originally issued, the said policies of life insurance issued to plaintiffs and referred to in the preceding finding contained provisions permitting the insured to borrow from said insurance company on the sole security of the policy by applying for a policy loan; that these policy loan provisions provided that interest in the

amount of 6% per annum, compounded annually, would be added to the amount of the policy loan, and further provided that when the amount of the policy loan, thus increased, exceeded the policy loan values the policy would be cancelled; that none of said policies imposed on the insured a personal liability to repay such policy loan.

23. The Court finds that in accordance with Section 407 of the Soldiers' and Sailors' Civil Relief Act of 1940, the Secretary of the Treasury of the United States set the interest rate to be paid on the certificates mentioned in said Section at three per cent (3%) per annum, not compounded.

24. The Court finds that pursuant to said Act and the regulations prescribed thereunder, the Administrator of Veterans' Affairs prescribed Insurance Forms 380, 381, 382 and 394, all of which were used in handling the protection of plaintiffs' policies, and copies of which are in evidence herein.

25. The Court finds that pursuant to Section 401(2) of said Act the Administrator of Veterans' Affairs issued the notice therein called for (V.A. Insurance Form 385), a copy of which is in evidence herein.

26. The Court finds that Harold W. Breining and H. L. McCoy made the statements attributed to them in Interrogatories 27, 28 and 29; that said Harold W. Breining was then Assistant Administrator of the Veterans Administration, in charge of all matters relating to insurance, and said H. L. McCoy was then an official of the Veterans Admin-

istration, with the position of Director of Insurance.

27. The Court finds that plaintiffs were not consulted with regard to such election made by California-Western States Life Insurance Company; that plaintiffs did not individually or collectively join in such election or consent or agree to any modification of the relationship between them, the said insurance company and the defendant originally created by their applications for protection of their said policies and the approval of such application by defendant.

28. The Court finds that a substantial number of persons, in addition to plaintiffs, owned policies of life insurance issued by California-Western States Life Insurance Company which were brought under the protection of the Soldiers' and Sailors' Civil Relief Act of 1940 after its enactment and prior to its amendment in October 1942; that of the policies so protected eight were terminated by the death of the insured while the policy was under protection, and 38 of such policy-holders either paid the insurance company in cash the amount of unpaid premiums plus interest at the policy loan rate, or fully paid such premiums and interest by applying the cash value of their policies thereto.

29. The Court finds that the plaintiff and the plaintiffs in intervention and each of them at the commencement of this action and at the times of the interventions and at all relevant times resided

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within the boundaries of the Northern District of California.

Dated: May 3, 1954.

vs. **PAL M. LEMMON,**

United States District Judge

[Endorsed]: Filed May 3, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Paul E. Plesha, Plaintiff above named, and James E. Mabbutt and Myron L. Kern, Plaintiffs in Intervention above named, and each of them do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 16th day of March, 1954, and from the whole of such judgment.

Said Plaintiff and said Plaintiffs in Intervention on the 25th day of March, 1954, filed with the Clerk of the District Court of the United States for the Northern District of California, Northern Division, a Motion for Amendment of Findings of Fact and Conclusions of Law, and on the 3rd day of May, 1954, the Court acted on such Motion by amending its Findings of Fact made and entered in this action.

Dated: June 25, 1954.

/s/ WHITE, HARBER & SCHEL,

/s/ LAWRENCE A. SCHEL,

Attorneys for Appellants Paul E. Plesha, James E. Mabbutt and Myron L. Kern.

[Endorsed]: Filed June 25, 1954.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Appellants Paul E. Plesha, James E. Mabbutt, and Myron L. Kern, hereby designate as the record, proceedings and evidence to be contained in the record on appeal in this action, the following:

1. Complaint of Paul E. Plesha.
2. Defendant's Answer to Complaint.
3. Complaints in Intervention of James E. Mabbutt and Myron L. Kern.
4. Defendant's Answers to such Complaints in Intervention.
5. Requests for Admissions numbered 1 through 17 (b), and Replies thereto.
6. Written Interrogatories numbered 1 through 41, and Answers thereto.
7. The entire transcript of the proceedings and evidence at the trial of this action.
8. All exhibits introduced at said trial by Plaintiff, Plaintiffs in Intervention, and Defendant.

9. Order Admitting Evidence, filed March 25, 1954.
10. Judgment entered March 16, 1954.
11. Motion for Amendment of Findings of Fact and Conclusions of Law, filed March 25, 1954.
- 11-a. Finding of Fact, etc.
12. Findings of Fact and Conclusions of Law as modified and filed May 3, 1954.
13. Notice of Appeal, filed June 25, 1954.
14. This Designation.
15. The complete record and all of the proceedings and evidence in this action.

/s/ WHITE, HARBER & SCHEI,

/s/ LAWRENCE A. SCHEI,

Attorneys for said Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed June 25, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below, are the originals filed in this Court in the above entitled case, and that they constitute the record on appeal herein as designated by the parties.

Complaint.

Answer.

Complaint in intervention (Kern).

Complaint in intervention (Mabbutt).

Answer to complaint in intervention (Kern).

Answer to complaint in intervention (Mabbutt).

Written interrogatories submitted to U. S.

Request for admissions.

Defendants reply to request for admissions.

Defendants reply to request for admissions.

Request for additional admissions.

Additional written interrogatories.

Opinion and order.

Findings of fact and conclusions of law.

Judgment.

Motion for amendment of findings of fact, etc.

Order admitting evidence.

Amended findings of fact, etc.

Notice of appeal.

Cost bond on appeal.

Designation of contents of record on appeal.

Order extending time to docket appeal.

Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 18a.

Defendant's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N and O.

One volume Reporter's Transcript (Jan. 23, 1953).

One volume Reporter's Transcript (March 30, 1953).

In Witness Whereof, I have hereunto set my

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hand and the seal of said Court this 31st day of August, 1954.

[Seal]

C. W. CALBREATH,

Clerk

/s/ By C. C. EVENSEN,

Deputy Clerk

In the District Court of the United States, Northern District of California, Northern Division

No. 6326

PAUL E. PLESHA,

Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

JAMES E. MABBUTT and MYRON L. KERN,
Plaintiffs in Intervention,

vs.

UNITED STATES OF AMERICA, Defendant.

TRANSCRIPT OF PROCEEDINGS

Friday, January 23, 1953

Before: Hon. Dal M. Lemmon, Judge.

Appearances: For Plaintiffs and Plaintiffs in Intervention: Lawrence A. Schei, Esq., Bank of America Bldg., Sacramento, Calif. For the Defendant: William H. Lally, Esq., Asst. U. S. Attorney, and David C. Byrd, Esq., Solicitor's Office, Veterans Administration. [1*]

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Friday, January 23, 1953—11:00 a.m.

The Clerk: Case No. 6326, Plesha vs. United States, for trial.

The Court: You may proceed.

Mr. Schei: We are ready to proceed, your Honor.

Mr. Lally: There is one matter before we start: I would like to introduce Mr. David C. Byrd from the Solicitor's Office of the Veterans Administration, who has come to assist in the presentation of this case, and I ask that he be permitted to do so.

The Court: Yes, he may participate with counsel for the Government in the trial of the case. [2]

* * * * *

Mr. Schei: There are some factual issues involved, your Honor. Your Honor, I take it, has been examining the file?

The Court: Yes.

Mr. Schei: A number of written interrogatories were submitted, answers to which have been furnished. We have been conferring in the United States Attorney's office yesterday afternoon and this morning concerning this matter. I understand that the United States Attorney would object to the relevancy as to some of the answers elicited by the interrogatories, and perhaps your Honor would wish to go into that [4] matter.

Then we desire to produce certain evidence that is not covered by the interrogatories, and we have been discussing with the United States Attorney's office the nature of that evidence, and so on.

Mr. Byrd: The first question, actually, your

Honor, is one, I believe, of jurisdiction. It is the contention of the Government that there is no jurisdiction in this Court in this case.

The Court: Well, I suspect that counsel will want to brief the case after the evidence is in, will they not?

Mr. Byrd: Yes.

The Court: Of course, the question of jurisdiction can be briefed at that time together with the other problems involved. I suppose you have gotten as far as you can; have you, through requests for admissions and through the interrogatory process?

Mr. Lally: Your Honor, as I understand it as a result of our conferences, there are three basic problems: One is jurisdiction, another is the problem of whether or not these particular plaintiffs were indebted to the Government by reason of the premiums we say the Government has guaranteed,—

The Court: Is there any dispute as to the guarantee?

Mr. Lally: It is the position, as I understand it, of Mr. Schei that it was a guarantee or benefit and the men were [5] not to pay it back, and therefore they are not indebted to the Government.

The third issue is that if they were so indebted, was the Government within its rights to offset the same as they did from the insurance benefits?

Those are the three issues, as I understand it, and the other issue that Mr. Schei discussed. Is that correct, Mr. Schei?

Mr. Schei: Yes, that is correct.

The Court: I take it that you had better call your first witness.

Mr. Lally: One thing in that regard: I believe there are many facts which maybe can be stipulated to, such as the applications for the policy, and I have complete files from the Veterans Administration that show a great deal of this, and I believe much can be accomplished in that regard, can it not, Mr. Schei?

Mr. Schei: I agree with that. We can show the applications that were made and the approvals, and so forth.

Mr. Lally: My point is, Mr. Schei, if you want to proceed with your case and suggest such fact stipulations as you believe pertinent, we can then tell you whether or not we will enter into them.

Mr. Schei: A good deal of this, your Honor, has been admitted by the pleadings and the interrogatories, and I don't [6] think there will be any question about the relevancy and the admissibility.

On the jurisdictional point I asked in one of the interrogatories, or two of them, I believe, for copies of the application for special dividends filed by the three plaintiffs. Those are not attached to the copy I got back. I understand they are here.

Mr. Lally: We have them available this morning, your Honor.

Mr. Schei: I would like to be sure that those are part of the record. There is no objection to those going in?

Mr. Lally: No. If they are not attached to the

original we will be happy to substitute the ones we have here, your Honor.

Mr. Schei: Is there any objection to those going in evidence?

Mr. Byrd: You are referring to these three applications?

Mr. Schei: I am.

Mr. Lally: We will supply you with these for evidence, Mr. Schei, and also stipulate that they are true copies of the originals as they were submitted.

Mr. Schei: Very well, then. Now, do you have any objection to their going in evidence?

Mr. Lally: No, we have no objection. You offer them; we have no objection. [7]

Mr. Schei: Very good.

The Clerk: Plaintiffs' Exhibit No. 1.

Mr. Schei: There are three of them there.

The Court: Three different applications? There are three different veterans?

Mr. Schei: There are three plaintiffs here.

The Court: All right; separate numbers.

The Clerk: Plaintiffs' 1 for Plesha, 2 as to Kern, and 3 as to Mabbutt.

(The applications referred to were marked Plaintiffs' Exhibits Nos. 1, 2 and 3.)

[See pages 253-256.]

Mr. Schei: Now, then, at a later date, after these applications were made, the Government sent to each of these men a statement advising them that their dividend was so much and that so much had been deducted. Do you have copies of those that could go into the record?

Mr. Lally: I would suggest at this stage, Mr. Schei, that we introduce the authenticated copies of the Veterans Administration's file, and if you wish to introduce those we will supply you those, and also authenticated copies, and they are admissible under Public Law 430 of the 73rd Congress, according to our understanding. If you wish to offer them they will be made available to you for that purpose.

Mr. Schei: This is not what I was talking about, Mr. Lally. [8]

By the way, do you have any objection to the introduction of the blank of the entire form of which those are a part that were introduced as Exhibits 1, 2 and 3?

Mr. Lally: There is no way of identifying them, Mr. Schei, as being the same, so we would be unable to enter into such a stipulation.

Mr. Schei: My only purpose in offering this, your Honor, the person who wanted to make application for these particular dividends picked up at the post office a form. He sent a part in and tore a part off. Now, this was a part torn off, which naturally those exhibits would not show, since that was not retained by the plaintiff.

Mr. Lally: We have no way of knowing that is the form used in this connection, if it was not changed at a later date, and therefore we cannot enter into such a stipulation.

Mr. Schei: There isn't any difference, is there?

Mr. Lally: We have no way of knowing, because

the form number does not appear on the photostatic copies already introduced.

Mr. Schei: Interrogatory No. 37: "Is it not true that the form for applying for such special dividend (VA Form 9-430) was prescribed, issued or printed in June 1949?"

The answer: "It is true that the form prescribed for completion by policyholders (V.A. Form 9-430) was printed during the period June to August 1949, and authorized for [9] general distribution on August 29, 1949."

This paper that I offer is VA Form 9-430, June 1949.

Mr. Byrd: Your Honor, may I say that we hate to take up the Court's time this way. Mr. Schei had not mentioned this form in our previous conferences about it or we would have looked it over and not taken the time.

Mr. Lally: Your Honor, we are quite willing to stipulate just as far as our answer to the interrogatory went, that the form prescribed for completion by policyholders, VA Form 9-430, was printed during the period June to August 1949 and authorized for distribution on August 29, 1949. But we are not prepared to nor can we stipulate that this form was the form that was in use in these Kern, Plesha and Mabbutt cases, because we have no way of comparing them to see whether they are identical. There may have been other Veterans Administration forms used that we are not cognizant of.

Mr. Schei: Wouldn't they be identified by a different number if they were a different form?

Mr. Lally: Certainly, but there is no form number on the photostatic copies we have. That is exactly our point.

Mr. Schei: Then without a stipulation might we offer these in evidence and have the Court's ruling as to the admissibility?

The Court: It wouldn't be admissible over the objection, unless there was proof of the relevancy and proof it was used. [10]

Mr. Schei: Very well. I will put Mr. Plesha on the stand and ask him if this is the form that he used. Will that be satisfactory, later on?

The Court: Very well.

* * * * *

The Court: I am going to take the recess, and those matters that you did not take up with opposing counsel and want to discuss with them in the way of obtaining stipulations, you may take up during the recess.

(Recess.) [11]

* * * * *

The Court: You have made some progress, have you?

Mr. Schei: I think so, your Honor. There really is not any basic disagreement, your Honor, about what the facts are here. I don't think there will be a single matter on which there is a conflict in the evidence in respect to the facts.

The Court: I suspected that.

Mr. Schei: Mr. Lally suggested that perhaps it would be well, if your Honor thought so, that

we each make a brief statement of what we considered the issues to be and our positions.

The Court: Well, I would want you to either stipulate to the facts orally or in writing so there will be no question or equivocation about the stipulations.

Mr. Schei: We are prepared to do that, I think, as to most of the facts. There will be some we will put on some testimony about.

The Court: Well, you then state what you understand the facts to be and I will accept them as the facts in the case unless there is some dispute voiced as you are stating those facts.

Mr. Lally: Your Honor, might I interject for just a moment? I think Mr. Schei and I are both of the mind that the physical facts as they happened in this case all down the line [12] since these three gentlemen applied for insurance policies when they entered the service are quite clear, and there is no disagreement as to anything. The disagreement is as to the legal effect or interpretation based on those facts.

The Court: You don't need any evidence, then, if that is the situation.

Mr. Lally: We have the records, as we told Mr. Schei, and will introduce them setting forth the correspondence and the application and all the documentary evidence to support—

The Court: Why can't those just be offered in evidence now as a group?

Mr. Lally: We will be very happy to.

Mr. Schei had, as I understand it, some other

points to raise that are involved and that are not within those basic fact issues concerning this insurance.

The Court: You mean factual matters to raise?

Mr. Schei: Yes, your Honor.

The Court: Well, why not get out of the way what you have agreed upon first, then? Put that in.

Mr. Schei: Very well.

Mr. Lally: The first file, your Honor, concerns the original claim of Paul Plesha, and the first we will offer will be the authenticated copy of the Veterans Administration file, which is stated to contain copies of the complete file in the actuarial service pertaining to Paul E. Plesha. [13]

The Court: Very well.

(The file referred to was marked Defendant's Exhibit A.)

[See pages 287-296.]

Mr. Lally: Now, the next, your Honor, will be the Veterans Administration file properly authenticated containing the photostats of correspondence and certain forms of the records maintained in the payee's account of Paul Plesha. That is also authenticated, your Honor.

(The file referred to was marked Defendant's Exhibit B.)

[See pages 297-305.]

Mr. Lally: The next is a properly authenticated file, copies of the file in the general accounting office. It has copies of the documents on file in this particular case again, California Western States Life Insurance Company vs. Paul E. Plesha.

(The file referred to was marked Defendant's Exhibit C.)

Mr. Lally: Your Honor, the next is also a Veterans Administration record, properly authenticated as a copy of the original dividend application pertaining to the insurance account of Paul Plesha, which we also offer.

(The copy of application referred to was marked Defendant's Exhibit D.)

Mr. Lally: The next, your Honor, is also a Veterans Administration record and properly authenticated copies or photostats, the front and back of the original premium record card in the case of Paul E. Plesha, which will also be offered. [14]

(The copy of premium card referred to was marked Defendant's Exhibit E.)

Mr. Lally: Next, your Honor, is an authenticated copy of VA Form 9-4612, a dividend work sheet, also in the case of Paul E. Plesha.

(The copy of form referred to was marked Defendant's Exhibit F.)

Mr. Lally: Then as to the complaint in intervention of James E. Mabbutt we have here, your Honor, and offer in evidence properly authenticated copies of the Veterans Administration file in the Insurance Actuarial Service pertaining to the account of James E. Mabbutt. We offer that in evidence.

(The file referred to was marked Defendant's Exhibit G.)

Mr. Lally: Now, as to the case concerning the plaintiff in intervention Myron Kern a similar file

from the Insurance Actuarial Service pertaining to the account of Myron L. Kern, which we also offer a properly authenticated copy of.

(The file referred to was marked Defendant's Exhibit H.)

Mr. Lally: This next also concerns the plaintiff in intervention Myron Kern, and is a properly authenticated copy of memorandum of public voucher for refund, stating the number and the account, and it concerns the case of Myron L. Kern, and is also a record of the Veterans Administration.

(The copy of voucher referred to was marked Defendant's Exhibit I.) [15]

Mr. Lally: Your Honor, there are certain answers to interrogatories that were propounded which we felt were immaterial and irrelevant. The truth of the matter is admitted, but we feel that certain of them are immaterial and irrelevant to the issues of this case.

Now, I don't know how the Court wishes to handle that, but we could make specific objections to them.

The Court: There has been no reply to the interrogatories to date.

Mr. Lally: Not as yet, your Honor. We will hold that, then, until the time that your Honor thinks it is proper to present it.

Mr. Schei: Well, we are handling this in a rather informal manner, your Honor. It will be our intention to offer the answers to all the interrogatories.

The Court: Well, do you offer them?

Mr. Schei: We do.

The Court: Now, what are the objections?

Mr. Lally: There are objections, your Honor.

Mr. Schei: I am wondering, your Honor, if these various matters are going to be briefed, since it is understood that the answers are factually correct, whether they are relevant or not is a question, and whether they are material, whether those questions could also be handled in briefs at the same time. [16]

The Court: I suppose those questions are interwoven with the main legal problems in the case.

Mr. Schei: They are, your Honor.

Mr. Lally: They are.

The Court: Why not, then—

Mr. Lally: We will reserve our right to make objections.

The Court: Then it will be understood there have been offered in evidence the answers to the interrogatories and all have been received except the ones that you specify that you object to, and my ruling upon those objections will await the final ruling in the case? You understand me now?

Mr. Lally: I understand. I just want to be sure Mr. Byrd does, your Honor.

The Court: Now, if you will specify the specific replies that you object to and state your ground for objection.

Mr. Lally: That is what I am prepared to do, your Honor.

Your Honor, Mr. Byrd suggests we interpose an objection as to all of them and then we can be

more specific in our brief, they to be reserved as your Honor suggests.

The Court: Very well.

Mr. Lally: Then we interpose an objection to all of them.

The Court: You had better state your objection.

Mr. Lally: That they are irrelevant, immaterial and incompetent to the issues in this case.

Your Honor, there have also been filed in this case [17] certain admissions. There was a request for admissions and then admissions filed, and we would like the same right so far as those are concerned, your Honor.

Do you have any objection? Also again they are interwoven in the case, your Honor.

Mr. Schei: I was just wondering if an admission made isn't in the case for all purposes, but—

The Court: It is in the same position as an interrogatory. If you have a favorable answer to an interrogatory it is an admission, and that is the way it comes into evidence.

Mr. Byrd: It is understood, your Honor, we will have the same reservation?

The Court: It will be understood that the admissions in the answers to the interrogatories have been offered in evidence and the Court reserves its rulings on the objections as to all of those until the final decision in the case.

Mr. Lally: Thank you, your Honor.

Mr. Schei: Might I ask—I did not inspect all of those documents as you were offering them—Have you offered yet the determination of the Vet-

erans Administration, that January 15, 1952 document?

Mr. Lally: All the documents heretofore entered contained each individual case. I believe that is the document that you refer to (exhibiting document to counsel)?

Mr. Schei: Yes. [18]

Mr. Lally: This also, your Honor, is a properly authenticated copy of a document of the Veterans Administration's records, and it is a copy of authorization of the 1948 special dividend on National Service life insurance, and it is dated August 10, 1952.

The Court: It applies to whom?

Mr. Lally: All three.

(The document referred to was marked Defendant's Exhibit J.)

The Court: Now does that complete the documentary evidence from the Veterans Administration file?

Mr. Lally: I believe it does, your Honor.

The Court: Now, Mr. Schei, if you want to supplement that with any evidence, do so.

Mr. Schei: Yes. Now, we had also discussed a stipulation concerning certain provisions of the policies of insurance these three plaintiffs took out from the California Western States Life Insurance Company, to show—The purpose of offering this is to show the nature of their obligation to the insurance company.

I have here the original policy of Mr. Plesha, Paul E. Plesha.

The Court: Do I understand that each one of these three veterans took out the same sort of policy with the same provisions? [19]

Mr. Schei: Not identical, your Honor, but in the particulars that were here concerned with, yes.

Mr. Lally: Your Honor, we are not prepared to stipulate that that is necessarily so, because the policy has not been made available to us. As both Mr. Schei and I understand it, we are agreed to stipulating that the policy of Mr. Plesha does contain the provisions that Mr. Schei wishes to read into the record to save putting the whole policy in, but so far as the other two are concerned, I believe there are people in the employ of the company who can testify to the contents, but we are not prepared to stipulate, because we have never had a chance to see the policy.

Mr. Schei: That is correct, your Honor.

Mr. Lally: Also, your Honor, we would like to interpose the same objection to this document and its relevancy and materiality to the case and reserve the ruling on the objection. However, we don't want to keep it out at this stage.

The Court: Very well.

Mr. Schei: This, your Honor, is an insurance policy issued by the California Western States Life Insurance Company, policy No. 419,814, issued to Paul E. Plesha. The face amount of the policy is \$2500, annual premium \$57.63; date of issue, December 6, 1940.

On the face page the policy contains the following language: "An annual premium of Fifty-seven

and 63/100 Dollars is [20] payable on each 6th day of December commencing on the date of issue hereof during the continuance of this policy subject to the provisions hereof pertaining to the payment of premiums."

At another place in the policy the following language—it is in the portion of the policy headed "Non-forfeiture and Loan Provisions"—the following is there, and I am now quoting:

"How. Cash Loans are Made: After three full years' premiums shall have been paid hereon, the Company at any time while this policy is in full force and effect will loan, upon proper assignment of this policy and upon the sole security thereof, a sum equal to, or at the option of the owner hereof less than, the cash value hereof at the end of the then current policy year.

Interest on any such loan will be at the rate of 6% per annum, payable in advance on each anniversary of the policy. The Company will deduct from such loan any existing indebtedness hereon, any unpaid balance of the premium and interest on the loan to end of such policy year. If such interest is not paid when due it shall be added to the existing loan and shall bear interest at the same rate (providing that such loan will not thereby be increased to an amount greater than the cash value hereof.)

If the loan is for a purpose other than the paid premiums on policies in the Company, the granting of such [21] loan may be deferred by the Com-

pany in its discretion for a period of not exceeding three months after receipt of application therefor at the home office of the Company. Failure to repay any such loan or to pay any interest thereon shall not void the policy until the total indebtedness hereon to the Company shall equal or exceed the cash value at the date of default in payment of such interest.

At any time prior to the death of the insured or default in payment of any premium and prior to the maturity date hereof the whole or any part of any indebtedness may be repaid."

That is the end of that quotation.

Now, on this premium business, do you want me to read in the provisions on the premiums, or can we agree that the policy provides if the premiums are not paid the policy will lapse after the expiration of the thirty-day grace period?

Mr. Byrd: If the Court please, we are willing to stipulate that the policy in question contains a provision whereby if premiums are not paid within the grace period allowed by the policy that the policy will lapse.

Mr. Lally: Your Honor, it is understood that our objection runs to everything concerning the policies, however.

The Court: Very well.

Mr. Schei: The purpose of that, your Honor, is to show [22] that the premiums under the loan do not become a debt of the insured to the insurance company, and the effect of non-payment within the required time, and let us assume that that includes

any automatic loan provisions to take care of premiums, results not in the creation of a debt but in the cancellation of the policy.

The Court: That is agreed to?

Mr. Byrd: If the Court please, I just asked Mr. Schei if the policy contained a provision for automatic loans in addition to non-payment of the premium, and he after looking advised that it does contain such provision. Therefore, the agreement that we made that the policy contained the provision that the policy would lapse if the premium was not paid in thirty days is, of course, subject to other provisions to the contrary in the policy.

Mr. Schei: Which would include the fact that it would not lapse if the automatic loan kept it in force.

Now, I think, your Honor, what we will do as to the policies of the other two plaintiffs, which I do not have present in court—we have discussed this procedure with the representatives of the Government here—is to have testimony concerning the fact that similar provisions were in those policies, from an official of the company who is prepared to so testify.

The Court: You would not object to that on the ground [23] it is not the best evidence, or do you have the policies?

Mr. Byrd: No. In order to be cooperative as possible we have agreed with plaintiffs' counsel that if an official of the company—that the plaintiff may show what the records of the California Western

States Insurance Company reflect with respect to these policies.

The Court: Without producing the records themselves?

Mr. Byrd: Sir?

The Court: Without producing the records?

Mr. Byrd: Yes.

Mr. Schei: Well, the records of the insurance company are available, your Honor. The original policies are not. The records of the insurance company are present in court.

Mr. Lally: Then, your Honor, as to these policies concerning these other two people, the same objection and same reservation.

Mr. Schei: It may be understood as far as I am concerned, your Honor, that the objection of incompetency, irrelevancy and immateriality goes to all the evidence that we offer.

The Court: Very well.

Mr. Schei: Now, your Honor, there are certain facts concerning practices widespread in the insurance business which we wish to be before the Court, practices concerning the question of whether non-payment of premiums creates a debt from the insured to the insurance company, and also questions as to [24] what the policy loan rate of interest being charged by major companies in the field was at the time that the 1940 act was before Congress.

There are standard texts in the field, Vance on Insurance is one, in which the author treats not only of the law on the subject but also recites

various factual matters as to the practices of insurance companies.

Now, I believe that your Honor has the authority to take judicial notice if the matter is brought to your judicial knowledge of matters generally known, and if practices of insurance companies are so widely accepted as to be discussed in that vein by recognized writers in the field——

The Court: You are referring to policies that are uniform throughout the insurance field?

Mr. Schei: No. We would like to prove either by referring your Honor to these works which say that such and such is the fact, No. 1, or by direct proof, which I think we could bring in here if necessary, No. 2, that except in very unusual instances premiums are not debts of the insured to the insurance company, that under nearly all policies issued by nearly all companies if the insured does not pay his premiums the effect is that the policy lapses, but the insured does not become indebted to the insurance company if he does not pay his premiums.

It can be established in one way or another, but that is [25] the fact, and these insurance texts so state.

Now, perhaps the materiality of that is not immediately apparent to your Honor. I assure you I have a very definite reason for wanting that.

The Court: I think I sense it.

Mr. Schei: And then the second matter, also covered in Mr. Vance's book, which is a standard work in the field, is certain statements concerning

the rate of interest charged for policy loans by insurance companies in general during 1939 and 1940. There is a section in his book where that is specifically covered.

Now, we discussed this matter with the United States Attorney. It would be possible for me, for example, on the policy loan provision to bring Mr. Marcus Gunn, who is vice president and actuary of the California Western States Life Insurance Company to testify that it was his job to know what the rates of interest were that were charged by various companies on these things, that he did know what they are and could testify what they are.

In addition, Mr. Dorety has made a very comprehensive study on the subject and has a tabulation that he can testify to, but it seems to me the thing could be shown most simply if we just took the statement of Mr. Vance as being—representing what the general practice in the life industry was at that time. It would save a good deal of time and also a good [26] deal of space in the record.

Would your Honor like to examine the passages in the book I am referring to?

The Court: Well, I was thinking about your interest problem. That would be in direct conflict with a specific and unambiguous provision in the policy which states that the rate of interest is 6 percent.

Mr. Schei: In this particular policy that is correct, your Honor.

The Court: You could not have a custom varying an express term, could you?

Mr. Schei: Well, my purpose in offering evidence on the rate of interest is the Congress in the 1940 act in several places refers to the interest to be the policy loan rate, and in another place it refers to the rate of interest that the Government is to receive on amounts of money tentatively due from the Government to the insurance company as shown on what they call statements of differences that were made *very* month by the Government, and perhaps to make a long story a little bit short, what I desire to show is that while the Government was paying under the 1940 act to the insurer 3 per cent simple interest on the amount of unpaid premiums shown by those monthly statements of differences, that under other provisions when a policy matured by death of the policyholder or when a policy was reinstated by the man getting out of the [27] service and paying up, the Government would be entitled to a credit of the amount of premiums so paid against these monthly statements of differences plus any interest at the policy loan rate.

In other words, I am trying to show that there is a difference between the interest rate for computation of the Government liability to the insurance company and for the computation of the credits to the Government on these monthly statements of differences because of the difference between 3 per cent and the practice in the business of charging more than that, namely, 5 or 6.

And that situation is of importance not only in ascertaining what happened in figuring out the liability on these three particular policies, but also

in ascertaining what the situation was with regard to which Congress legislated.

I may not be making myself very clear, but—

The Court: Well, the Government in its answer or answers, does it set out the indebtedness at the rate of 3, per cent simple interest?

Mr. Schei: No, your Honor. What has happened is this: Prior to the— Well, first the 1940 act was passed, then we will take the case of one of these plaintiffs. He had a policy of insurance before, he went into the service. After he went into the service he made application that it be protected under the Soldiers' and Sailors' Civil Relief Act. That [28] application was approved. From that time until a date after the amendment of 1942 to the law his name appeared along with other names on a monthly report that the insurance company made up and submitted to the Government, and after those reports were submitted the Government would issue a certificate showing the balance due the insurance company on a particular monthly difference report.

Then in the 1942 act there was a provision whereby the insurance company could, if it so elected, have its account with the Government computed in accordance with a new formula, namely, the formula set forth in the 1942 act, which was a very different sort of a formula. They weren't concerned any longer with monthly differences between the credits on one side of the reports and the debits on the other.

They were now concerned with the policy as to

what amounts were to be credited, and the 3 per cent rate that was effective before in computing the Government's liability to the insurance company was thrown out the window and they put the policy rate on both sides, so that when you computed the amount that would be due under the 1942 act there was no longer any difference.

Now, the California Western States Life Insurance Company—and this also is a fact which we will offer either evidence on (we can do that)—elected to have the computations made in accordance with the 1942 act. [29]

So that when these particular plaintiffs allowed their policies to lapse, the computations made in Washington were based entirely on the method of computation provided in the 1942 act.

That is correct, isn't it?

(No audible response.)

Mr. Schei: From the beginning, from the day that the first premium became due that was protected back before the amendment of the act.

So what happened was that by consent of the Government and the insurance company, exercising its election, the method of computation was changed, but that was done without the consent of these plaintiffs that I represent and without their knowledge.

It had a double effect as to each of them which resulted not only in a different method of computing the Government's liability to the insurance company, and if these men are liable, consequently they are liable to the United States, but also had

the effect, as we will show by evidence, of increasing the amount of that liability.

Now, I think—that is one of the reasons for wanting this in the record, and the second reason—there is a second reason: In a particular case the Government might make a profit, so to speak, a paper profit perhaps, when a man protected under the 1940 act died or reinstated his policy by [30] paying up the back premiums, and it would come about in this way: that on one side of the monthly difference report the Government's liability would have been shown as this premium and that premium, and so forth, plus 3 per cent simple interest, and over on the other side when the man dies they add up all of his premiums that appeared on these monthly difference reports and take off interest at the policy loan rate. In these cases it would be 6 per cent. In all cases it would be more than 3, according to this evidence that we want to put in.

Now, that would mean, then, as to that man that more credits for the Government would have gone on the books than debits against the Government had gone on in the previous monthly difference reports, and all of those things would go on and on and on until the final time for settlement between the Government and the insurance company came, at which time the Government would pay the insurance company not by the policies but by the difference, the final difference reflected from all of these monthly difference reports, and if the thing had been figured out that way, Mr. Plesha and Mr. Kern and Mr. Mabbutt would have had more cred-

ited, would have had some of those extra credits come over and reduce their liabilities to the Government.

So what the thing comes to is this: that it would have been very, very difficult to try to figure out under that system of computation what the Government had paid on behalf [31] of Mr. Plesha and Mr. Kern and Mr. Mabbutt, because in order to figure that out you not only would have had to take into account the things that had gone into the monthly difference reports as far as they were concerned, but also what had gone into the monthly difference reports as far as everybody else who had a policy with Cal. Western who had applied for protection under the Act.

So the point that I will make there on argument is that if Congress had intended in the beginning, in 1940, that the men who applied for this protection be liable to the Government or to reimburse the Government in the event the Government had to pay the insurance company, then Congress necessarily would have had to put in some kind of machinery into the original Act to determine how you were going to arrive at the proper figure, because, as I say, having to take all of these other policies into account it would have been a very difficult thing to do.

Now, Congress did go into a great deal of detail as to accountings between the Government and the insurance companies. It said not one word about accountings between the Government and the servicemen who might be liable.

Now, the fact they didn't say anything about that, I believe, is a very strong argument that they did not intend at all that the servicemen be liable, because if they had intended they would have put in some additional language. [32]

The Court: May I ask you gentlemen whether you stipulate upon the facts in the dissertation by Mr. Schei, subject to the materiality and competency?

Mr. Lally: I believe the facts as Mr. Schei has represented them concerning the 1940 Act, the actual terms of it, and the terms of the 1942 Act and the option, all speak for themselves in the Act, as a matter of law. However, I believe that Mr. Schei has quite competently set them forth here in an understanding manner. As to whether or not it bore upon the congressional intent, it is our position that there is no doubt that Congress intended that these men repay it, and other factors show that, and we feel that this evidence that Mr. Schei is now offering, such as textbooks, is not competent to the determination of whether or not the Court could take judicial notice of those textbooks, which, of course, is in the Court's discretion.

The Court: Will you stipulate I may take that notice subject to the materiality of the evidence?

Mr. Lally: Also, your Honor, as to the best evidence of the particular fact. I don't think it is a matter of which the Court can take judicial notice.

The Court: Unless you agree upon the facts—I was trying to simplify it.

Mr. Schei: That was my desire. We have talked

about this thing and we have had two or three what I thought were [33] understandings, and then we find it just a little difficult to get to where we are going to go.

Mr. Byrd; If the Court please, if I may make a statement at this point, I would like to say that it was in conference yesterday, I believe, that Mr. Schei first suggested that there were issues of fact other than the pertinent records of the Veterans Administration with respect to the coverage afforded by the Soldiers and Sailors Civil Relief Act and the special dividends to which these parties might have been entitled had the Government not assumed the position that they were indebted to the Government, and therefore we are not, the Government is not, prepared to offer at this time any evidence with respect to the computation or the manner of computing that he has suggested here.

The Government has offered the statements of account of these individuals and which show for themselves the method employed and the rate of interest applied and the amounts determined, and those are definite figures.

Insofar as the provisions of the 1940 Act and the 1942 amendatory Act are concerned, as the United States Attorney has suggested, that is a matter of law. As to the effect of any conflict that there may be, that is a matter of law between the two and their application in this case.

We have advised opposing counsel, however, that if they offer to show that the computations made by the Veterans [34] Administration in these cases

were not correct, that the Government would have the opportunity to introduce any evidence at a later date, as soon as it could be made available, to rebut it.

Mr. Schei: Mr. Byrd is talking about something in addition to these insurance texts to which we were just referring, your Honor. Mr. Drummond from the California Western States Life Insurance Company has at my request made certain computations concerning—on certain assumptions concerning what the liability of these three plaintiffs would have been if their liability had been computed in accordance with the formula in the 1940 Act.

Now, as to that, I have told Mr. Byrd that we would certainly expect, if they wanted to submit those computations to mathematicians for any criticism, either as to the actual computations or as to the assumptions on which the computations were based, and also if they wanted to introduce evidence along those lines, they certainly should be able to do so, and I would have no objection to those coming in at a later time; but on the immediate problem that we were talking about here, there are two rather simple things which I think are well established in the insurance business, which we would like to have your Honor recognize.

No. 1 is that except in very unusual circumstances life insurance premiums, when they become due, are not a debt of [35] the insured to the insurer, and, No. 2, that throughout the insurance industry in 1939 and 1940 the rate of interest charged on policy loans exceeded 3 per cent.

Now, whether it was 4 per cent or 5 per cent or 6 per cent is immaterial to the point I am making. I just wanted—actually, as I understand it, according to Mr. Vance, the practice during 1939 and 1940 was 6 per cent or 5 per cent, one or the other. That is what was charged by all the big companies and the little ones, too.

Now, those are the only two facts, both of which are disclosed by Mr. Vance's work, and I found a statement to the same effect in American Jurisprudence, as far as opinions were concerned, and, to save time and to save bringing some people like Mr. Drummond or perhaps someone from the Insurance Commissioner's office here to testify to it, we thought your Honor could take judicial notice of well recognized texts in the field as to those particular things.

Mr. Lally: To which we object, your Honor, because we are not insurance people and we are not competent to enter into any such stipulation. If there is evidence to be presented that should be presented on the point.

The Court: Well, you are asking me to take judicial notice that I am not so sure I could take judicial notice of. If you can satisfy me it is proper to take judicial notice of it, I will do so. [36]

Mr. Schei: I did not bring along the little book from which I got these references, but as I understand the rule, the Court is authorized to take judicial notice of facts of general knowledge.

The Court: Yes, and that is a very, very vague rule.

Mr. Schei: Yes, it is.

The Court: And people get into argument right away as to some things that are said to be well known and understood. It may be something well known and understood in a particular technical field, but not to the layman.

Mr. Schei: Yes, that is true, your Honor. I think there are some cases that have gone into that, but I am not sufficiently familiar with them to attempt to quote them from memory.

Now, there is another way that we could approach this thing. If these gentlemen here would be willing to consider Mr. Dorety, who is an assistant. I don't know what his exact title is, but he is counsel for the California Western States Life Insurance Company, and his duties are to advise the company in connection with legal matters; if he has made a study personally of the practice of other insurance companies concerning premiums and concerning policy loan rates, maybe we could get at it that way.

Mr. Lally: Mr. Dorety can testify, but I still think he should be qualified if he is to testify as an expert. It [37] would also go to the weight of his testimony, your Honor.

The Court: That is under the assumption that he can qualify as an expert.

Mr. Lally: That is correct, your Honor.

Mr. Schei: We have talked about this several times, your Honor, and we have gotten a different answer every time as to just how far they would go with us. This is the least far that they would go.

Mr. Lally: I don't think that is a fair state-

ment, Mr. Schei. Just to keep the record straight, I think that is the position we have taken consistently since we started talking about this, that we couldn't stipulate to this, it was a matter of proof, you would have to prove it and we would object, enter our objections. Isn't that your understanding, Mr. Byrd?

Mr. Byrd: That is right.

Mr. Lally: I just want the record clear on that, Mr. Schei.

Mr. Schei: Well, I understood that you would object certainly to the materiality of it, and I understand that you do, but as to the facts, we did discuss whether the textbook was a proper way to do this, and as to that we decided that your Honor, of course, is the one to decide as to what he will take judicial notice of.

The Court: I told you what you might do. You might at least call to my attention the statements in the textbook and then fortify that with the authorities that the Court can [38] take judicial notice and if later on I conclude I cannot take judicial notice of it, then we can reopen to take proof along that line.

Mr. Schei: That will be fine if we can do that, your Honor.

The Court: Very well; that will be the understanding.

Mr. Schei: Because we can produce the evidence in the most formal way, if that is necessary.

The Court: Of course, there will be involved in that the materiality.

Mr. Schei: Oh, yes, certainly.

As to the fact that 3 per cent simple interest was the rate on which the Government would pay the insurance companies under the 1940 Act, the Act provided that the Secretary of the Treasury was to specify what that rate of interest was. The Secretary of the Treasury did specify; you have a copy of his letter, but not a properly authenticated copy of it; but after he had specified it the '38 Code of Federal Regulations, Section—

The Court: The Court will take judicial notice of that.

Mr. Schei: Yes. I am just bringing this to your attention, Section 1033.12 recites—

The Court: Anything that the Court can take judicial notice of you can call my attention to in the brief.

Mr. Schei: In the brief; all right. [39].

Mr. Byrd: If the Court please, just in order that there may be no misunderstanding, plaintiffs' counsel asked me a few minutes ago about the computations being made on the basis of the 1942 Act instead of the 1940 Act and asked me if I would agree. I want the record to show that I said nothing in response to that question, as I did not make the computation and I am not in a position to state what I did state to the Court later, that the computations are of record.

The Court: Can you determine that to your satisfaction as to how the computations were made?

Mr. Byrd: No, sir.

The Court: Why not? The Government should know how they made the computations.

Mr. Byrd: Yes, but I mean they were made by actuarial people.

The Court: Couldn't you get the information from them?

Mr. Byrd: Oh, yes. As I told your Honor a few moments ago, we intend to do just that, yes, sir.

The Court: Very well.

Mr. Schei: As to the computations of the 1942 Act, your Honor, the material which is in evidence will show pretty well how those were made. There is what they call a statement of account which shows the computation of the matter.

Now, we have left, so far as factual matters are concerned, the question of this Veterans Administration Form 9-430, which [40] I desire to have in the record because of the fact that certain portions of it were detached.

The Court: Well, counsel refuses to stipulate to that.

Mr. Schei: Yes, that is right. One of my points is Mr. Plesha is here and I can get his testimony on that, and also as to a statement that he received when he was notified that they had deducted monies from his accounts, from his dividends, so if I might now call Mr. Plesha.

The Court: Very well.

Mr. Schei: Come forward, Paul.

PAUL E. PLESHA

called for the plaintiffs; sworn.

Mr. Schei: Might this be marked Plaintiffs' Exhibit 4 for identification?

(A form of dividend application was marked Plaintiffs' Exhibit 4 for identification.)

Mr. Schei: And this one No. 5, please.

(Statement of Veterans Administration as to Plesha dividend account was marked Plaintiffs' Exhibit No. 5 for identification.)

Direct Examination

Mr. Schei: Q. Now, Mr. Plesha, you are one of the plaintiffs in this matter?

A. That is right. [41]

Q. And you were in the service of the United States during World War II?

A. Yes, sir.

Q. And while you were in the service you had a policy of National Service life insurance?

A. Yes, sir.

Q. After you were discharged from the service you made application for a special dividend sometime in the month of December 1949?

A. That is right.

Q. I will show you here Plaintiffs' Exhibit No. 4 for identification and ask you to look at that form, please.

A. It looks like the same card we used.

Q. When you made your application to the Government for dividends it was on a form like this?

A. Yes, sir.

Q. Is this form, marked Plaintiffs' Exhibit

(Testimony of Paul E. Plesha.)

No. 4 for identification, different in any respect so far as you can tell from this?

A. Not that I can tell from that, no.

Q. Now, I will show you here Plaintiffs' Exhibit No. 1 and ask you to look at that.

A. That is my writing.

Q. Now, this is a portion of the form that you made out at the time you applied for the dividend, is that correct? [42]

A. That is right.

Q. And that—

A. The bottom portion of this card, I believe this piece is the—this one, and this is the—the bottom section, that photograph was on one side.

Q. It doesn't show a photograph of the other side?

A. Not of the other side.

Q. When you sent the form in in accordance with the instructions that it has on it, you detached—

A. That is right, the top section.

Q. —the section that is immediately above that which shows Plaintiffs' Exhibit No. 1?

A. That is right.

Q. Now I show you, Mr. Plesha, Plaintiffs' Exhibit No. 5 for identification and ask you if you have ever seen that before.

A. Yes. I received that—when I received my dividend check it was in the mail with my dividend check showing why they had withheld part of the dividend check.

Q. And this form is entitled, "Statement of National Service Life Insurance Special Dividend Ac-

(Testimony of Paul E. Plesha.)

count, V.A. Form 9-1698, October 1949," and there is some printing over here on the reverse of that form, is there not? A. That is right.

Q. And this is the original of the form that you received? [43] A. That is right.

Q. With your dividend check, in the amount of \$9.95, is that correct? A. Yes, sir.

Mr. Schei: I would like to offer these two exhibits in evidence at this time.

(Plaintiffs' Exhibits Nos. 4 and 5 for identification were received in evidence.)

[See pages 257-259.]

Mr. Schei: Do you wish to make objection to them?

Mr. Lally: Not at this time, other than the objection already made.

Mr. Schei: The usual objection as to the relevancy and materiality?

Mr. Lally: Yes.

Your Honor, Mr. Plesha is the plaintiff in this case, and there is in evidence certain documents which, of course, are signed by Mr. Plesha, and I would like an opportunity to ask him a few questions concerning part of the record that is already a part of this case. I don't know that it is in the scope of the direct examination of Mr. Schei.

The Court: Do you object on the ground it is not part of the scope of the direct examination?

Mr. Schei: I don't know what the questions are going to be, your Honor. As far as this record is concerned, I will be willing to stipulate wherever

(Testimony of Paul E. Plesha.)

it purports to bear Mr. [44] Plesha's signature that is his signature.

Mr. Lally: No, this concerns the circumstances surrounding the record, your Honor. Do you have any objection to my cross examining him—

The Court: I don't think it makes any difference. Counsel can call him as an adverse witness. He is the plaintiff.

Mr. Schei: Go right ahead.

Cross Examination

Mr. Lally: Q. These records, you testified, were identical copies. That is just to the best of your recollection, isn't it?

A. You are speaking of the long form, the long card?

Q. Yes.

A. I would say it is definitely, for this reason: Any other dividends that the Government paid out after the original one, no form was required for the veterans to complete, and I recognize the form as having seen it the first time, and I know there were no others after that.

Q. You aren't in a position to state that the Veterans Administration has not modified that form in any way over the years for people who wanted to get dividends, are you?

A. To my knowledge—

Q. To your knowledge you are not in a position to state whether they have or have not, are you?

A. That is right. [45]

(Testimony of Paul E. Plesha.)

Q. That is only to your recollection that it is the same form?

A. It is the same form to me, because it looks like the one that I filled out.

Q. Now, with reference to the insurance policy you had with the California Western States Life Insurance Company, do you remember when you took that policy out?

A. I believe it was in December of 1940.

Q. And you were in the military service at that time?

A. Just prior to my going into the service.

Q. Do you remember the date you went in the military service?

A. March 3 of 1941.

Q. Now, it is true, is it not, Mr. Plesha, that you were during the summer of 1940 a member of the National Guard?

A. That is right.

Q. And I believe you attended camp at Fort Lewis, Washington that particular summer, did you not?

A. I believe that is right.

Q. And it is true also, is it not, Mr. Plesha, that you anticipated entering the service as a part of regularly recognized troops on active status from the time you were at summer camp to the time you went in?

A. The time wasn't definite. We knew that at some time in the future we were going in.

Q. You anticipated entering the active military service for [46] a few months, but didn't know at what particular time you would go in, between the

(Testimony of Paul E. Plesha.)

time you were at summer camp to the time you went in?

A. I would say from summer camp until January of 1951, I believe was the first date that we were told we might go.

Q. You had varying dates that you were to report, did you not, and the date was set back because of certain circumstances?

A. That is right.

Q. And the first date that you were to report was actually sometime in the fall, was it not?

A. I believe that is right.

Q. And that date was changed and you were to report at a later date and finally they did activate the National Guard regiment that you were a member of on March 3, 1941?

A. That is right.

Q. Now, will you state again, please, the date of your policy? I don't find that form.

A. December, I believe.

Q. Would it be December 6?

A. I can't remember the date.

Q. What is the date you paid the first premium on your California Western States life insurance policy?

A. I can't say that.

Q. Do you know whether or not you paid a premium when you took that policy out or if the premium was paid at a later [47] date?

A. The premium was probably paid upon delivery of the policy to me, but I can't remember what time that would be.

(Testimony of Paul E. Plesha.)

Q. You have no recollection? A. No.

Q. I can understand that. It is a considerable lapse of time. Now, as to the circumstances, do you remember the name of the agent who sold you the policy? A. No, I don't.

Q. Can you tell me the circumstances under which it was purchased?

A. Well, all I recall of it was he came by the house one night and approached me on the purchasing of life insurance.

Q. Do you know whether he sold other members of the company, of your unit, at that time?

A. I have found out since then that he did.

Q. As a matter of fact, you found out, did you not, that he canvassed the unit?

A. I can't say that. I don't know.

Q. Now, can you tell me, please, just what your understanding was so far as the payment of premiums was concerned—we are speaking now with reference to the California Western States Life policy that you took in December of 1940 at a time when you anticipated momentarily entering the military service—what was your understanding when you bought that [48] policy with reference to premiums?

A. Well, I think—I think I know what you are getting to—

Q. Just answer the question, please, Mr. Plesha.

A. I see. About the premiums?

Q. Your understanding was that you were to pay the premiums on the policy, was it not?

(Testimony of Paul E. Plesha.)

A. That is right.

Q. There was no understanding that the Government was to make the payment of any part of those premiums, was there?

A. There was no talk of the Government coming in at all at the time.

Q. This policy was before you had any knowledge of the Soldiers' and Sailors' Civil Relief Act and its effect on the policy?

A. That is right.

Q. It was not taken out in contemplation of your entering the military service? A. No.

Q. With the idea that the policy premiums would be protected while you were in the military service? A. No, sir.

Q. That is not the fact, at least in your instance? A. That is right.

Mr. Schei: Might it be understood, your Honor, that I cannot see the relevancy or materiality of this line of [49] questions and that I will object and I do object to its admission upon the ground that it is incompetent, immaterial and irrelevant.

The Court: It is in now.

Mr. Schei: What?

The Court: I say, it is in now, the testimony is in.

Mr. Schei: Very well.

Mr. Lally: I have no further questions. Thank you, Mr. Plesha.

Mr. Schei: Is it out of order for me to make a motion that the testimony be stricken on the

ground that it is incompetent, irrelevant and immaterial?

The Court: Denied.

Mr. Schei: I would like to ask Mr. Drummond to come forward, please.

GLENN E. DRUMMOND

called for the plaintiffs; sworn.

Direct Examination

Mr. Schei: Q. Mr. Drummond, do you want to take with you the records that you have brought with you today? A. Oh,—

Q. What is your name, sir?

A. Glenn E. Drummond.

Q. And where are you employed? [50]

A. By the California Western States Life Insurance Company.

Q. And how long have you been employed there?

A. It will be twenty-five years March 1 of this year.

Q. You have been employed there steadily during that time? A. Yes, sir.

Q. And what is your capacity with the California Western States Life Insurance Company now, Mr. Drummond?

A. At the present time I am the assistant manager of the premium section department.

Q. And how long have you held that position?

A. Since May of 1942.

(Testimony of Glenn E. Drummond.)

Q. And prior to that time what sort of work were you doing with the company?

A. I was in the premium section department as a unit manager.

Q. Do you have any knowledge of some records in the files of the California Western States Life Insurance Company which are entitled "Monthly Difference Reports"? A. Yes, sir.

Q. Where are those records kept, if you know?

A. They are kept in the premium section department.

Q. And who has custody of them?

A. The premium section department has custody and they are under my direct supervision.

Q. Did you prepare the monthly difference reports or have anything to do with the preparation of the monthly difference [51] reports submitted by the California Western States Life Insurance Company to the Veterans Administration prior to the time when you changed the method of preparation to that provided by the 1942 Soldiers' and Sailors' Civil Relief Act? A. Yes, sir.

Q. And you are familiar, then, with those forms and the method of their preparation?

A. Yes, sir.

Mr. Lally: Your Honor, I would like to enter an objection to the last question and answer as assuming a fact not in evidence, that they did change the method of computation. There has been no evidence in the case up to this time as to that.

(Testimony of Glenn E. Drummond.)

Therefore I move to strike the answer and object to the question.

The Court: It will go out.

Mr. Schei: Q. Mr. Drummond, I show you a photostatic copy of what purports to be a letter dated December 21, 1942. Have you ever seen that before?

A. I don't know that I have personally seen the letter before. I knew that such a letter was to be prepared.

Q. Do you have with you a carbon copy of this letter?

A. I do not have in my files, no, sir.

Mr. Schei: It appears that the matter that is holding us up, your Honor, is something I misunderstood. I have here a photostatic copy of a letter—a carbon copy of a letter, [52] the carbon copy from the files of the California Western States Life Insurance Company dated December 21, 1942 concerning the contention of that company to have the computations made in accordance with the 1942 Act.

The Court: That is directed to whom?

Mr. Schei: The Veterans Administration, Washington, D. C.

Mr. Dorety told me you have the original in reply to that; is that right?

Mr. Dorety: Mr. Drummond, I believe, has the copy of it. The original of the letter, of course, is in Washington, and our copy is in the original file, Mr. Drummond's file.

(Testimony of Glenn E. Drummond.)

Mr. Schei: Q. Did you bring with you the reply to this letter?

A. I have— The letter that I believe you are looking at, Mr. Schei, is not directly in reply to that. The letter that I showed you was an answer to an inquiry we had sent to the Veterans Administration for a supply of a certain Veterans Administration form, and in reply to that the Veterans Administration informed us that in view of the fact that we had returned our certificates we were no longer to be required to submit or prepare the report that we were requesting a supply of.

Mr. Byrd: If the Court please, if the officials of the California Western States Life Insurance Company are familiar with the matter and are prepared to show that they notified [53] the Veterans Administration of their desire to—

The Court: The witness said that he did not see the letter, but a letter of that import was sent and prepared.

Mr. Byrd: Well, your Honor, we might dispose of this matter in this fashion: that it is the present understanding of the officials of the Veterans Administration that the California Western States Life Insurance Company did elect pursuant to the provisions of the Act of October 6, 1942 to return the certificates which had theretofore been issued under the 1940 Act, and that in the event that I should find upon my return to Washington that that is not the truth we will set the record straight.

Mr. Schei: That is perfectly satisfactory. Does

(Testimony of Glenn E. Drummond.)

that obviate the objection to the question and answer you recently objected to, Mr. Lally?

Mr. Lally: It obviously does. It is in evidence now.

Mr. Schei: All right. May the question and answer stand?

Mr. Lally: I prefer that it be re-asked and re-answered so we will be sure about it.

Mr. Schei: Would the reporter read to the witness the question to which objection was made?

The Court: No, a motion to strike.

(The reporter read as follows: "Q. Did you prepare the monthly difference reports or have anything to do with the preparation of the monthly difference reports submitted by [54] the California Western States Life Insurance Company to the Veterans Administration prior to the time when you changed the method of preparation to that provided by the 1942 Soldiers' and Sailors' Civil Relief Act? "A. Yes, sir.

"Q. And you are familiar, then, with those forms and the method of their preparation?

"A. Yes, sir.")

Mr. Schei: Q. Now, do you have with you, Mr. Drummond, any of those monthly difference reports? A. Yes, sir. (Producing)

Q. Very well. These are carbon copies from the records of the California Western States Life Insurance Company? A. Yes, sir.

? Would you produce those, please.

(Testimony of Glenn E. Drummond.)

A. (The witness handed the documents to Mr. Schei.)

Q. Are these all of the monthly difference reports that were submitted?

A. They are copies of the monthly difference reports that were submitted by the company to the Government, yes, sir.

Q. You don't happen to have another set of those, do you?

A. No. I have a blank form. Does that serve your purpose? If those are to be submitted in evidence we prefer to substitute photostatic copies of them.

Mr. Schei: Q. Mr. Drummond, would you explain to the [55] Court how these reports were prepared and how the monthly difference was computed?

A. The Act, the original Act, provided that the insurance company would prepare a report, a monthly report, for the Government, listing policy numbers, names of insureds and premiums due when such premiums were in default, and this report was to be prepared during the first fifteen days of the month covering policies on which premiums were in default as of the end of the previous month, provided such premiums were in default for thirty days. And that was the basis on preparation of the monthly difference reports.

Q. Now, you showed, then, in one column the number of premiums that had become due during that period that you were talking about?

(Testimony of Glenn E. Drummond.)

A. Yes, sir.

Q. Now, you showed in another column certain credits against those amounts, did you not?

A. Yes, sir.

Q. And what sort of thing might be shown in the column that you might say would be a credit in favor of the Government?

A. The items we would show in that column would be the cash payments made by policyholders where perhaps we had reported premiums delinquent and subsequently the policyholder made a payment toward that premium that was reported as a credit to the Government. [56]

Q. Now, suppose one of the—

Mr. Lally: Your Honor, might I interject so there won't be any misunderstanding, I wish to object to the relevancy of questions pertaining to this document. I have been waiting to object to its introduction in evidence, but I understand from the proceedings here that will come later, but I feel that all these questions concerning it are irrelevant, incompetent and immaterial as to the issues of this particular case at hand. I don't know how your Honor wishes me to phrase it or to object to each question as Mr. Schei asks it or as to how—

Mr. Schei: I believe I stated earlier, your Honor, that I would be willing to stipulate that the objection to the relevancy, materiality and competency goes to all of this evidence of this general nature that I am introducing.

The Court: That is what I understood.

(Testimony of Glenn E. Drummond.)

Mr. Lally: I just wanted to be sure, your Honor.

Mr. Byrd: All legal objections.

Mr. Lally: All legal objections.

The Court: That covers a lot of ground.

Mr. Schei: I don't know that I could stipulate to that, your Honor.

The Court: Your objections so far have been limited to the competency, relevancy and materiality.

Mr. Lally: That is the specific objection, your Honor. [57]

Mr. Schei: Q. Now, suppose one of the persons whose life insurance with your company had been protected under the Soldiers' and Sailors' Civil Relief Act of 1940 had died, what were the instructions as to the adjustments that were to be made in that event upon this monthly difference report?

A. There is a column provided on the report where credits were to be entered, and there is one column—Did you wish me to read the heading of the column?

Q. If you would, please.

A. "Amounts paid during calendar month just ending on premiums previously reported in default, including premiums deducted from the proceeds of policies terminated by death."

There is also a column, the next column, in which a credit would be entered for the Government, "Interest collected on defaulted premiums paid and interest on premiums deducted from the proceeds of policies terminated by death."

(Testimony of Glenn E. Drummond.)

Q. When amounts were entered in those columns, those two columns that you just mentioned, they would in effect offset to the amounts entered in those columns the amounts that had previously been entered in the column for unpaid premiums, would they not? A. That is correct.

Q. And then over at the extreme right-hand side of that form there is a column to show the net difference? A. Correct. [58].

A. Yes, in the event that there were a debit and a credit on the same policy at the same time there is an extension column to show the difference.

Q. And then the total of all the individual debits and credits, you might call them, on one monthly report would be added up and a total monthly difference figure arrived at, is that correct?

A. Correct.

Q. And that figure would be shown where?

A. When these were submitted to the Government the totals were not put in by the company; they were audited and totaled by the Veterans Administration, and then when the audit had been completed it was certified for the issuance of certificates. That happens to be the total of one which was taken at random (indicating).

Q. This last thing that you are talking about is the Veterans Administration form No. 382, is that correct? A. That is correct.

Q. And in that form the Government takes your report, completes it and totals it, is that correct?

A. That is correct.

(Testimony of Glenn E. Drummond.)

Q. And then there is shown down here at the bottom of the page a total of the figures shown in column 9, which is the net monthly difference?

A. That is correct. [59]

Q. And when that figure was arrived at, then the Government would issue the insurance company a certificate for that amount, is that correct?

A. Yes, sir.

Q. Now, was it possible for the amount of credits in the Government's favor to exceed the amount of charges against the Government for unpaid premiums?

A. It would have been possible, but it didn't so happen in our case in the period we were submitting these monthly difference reports.

Q. Did you receive a letter from the Government concerning a possible negative difference in that respect?

A. There was an instruction later received by the company and there was one paragraph in the letter that covered that point.

Q. Do you have that instruction letter with you?

A. I don't believe I have it. I believe Mr. Dorety has it in his file.

(Mr. Dorety produced a document.)

Mr. Schei: Q. I show you a letter on the letter-head of the Veterans Administration in Washington dated October 24, 1941, addressed to California Western States Life Insurance Company—

The Court: How much longer will this take?

(Testimony of Glenn E. Drummond.)

Mr. Schei: Not very much longer. [60]

(Recess.)

Mr. Schei: I believe, Mr. Reporter, I was asking questions and beginning to present this letter to Mr. Drummond—

(Record read.)

Mr. Schei: Q. Have you ever seen that letter before? A. Yes, sir.

Q. That is a part of the files of the California Western States Life Insurance Company?

A. Yes, sir.

Q. That is an original letter?

A. Yes, sir.

Q. By whom is it signed?

A. Harold W. Breining, Assistant Administrator.

Q. That is on the stationery of the Veterans Administration? A. Yes, sir.

Q. And that contains, does it not, various instructions concerning the preparation of these monthly difference reports? A. Yes, sir.

Mr. Schei: Would you mark this, Mr. Reporter, please, as our exhibit next in order.

Might we have permission to offer a photostatic copy of the original?

The Court: You mean substitute a photostatic copy?

Mr. Schei: Substitute for the original.

Mr. Lally: No objection, your Honor. [61]

(Testimony of Glenn E. Drummond.)

(The letter referred to was marked Plaintiffs' Exhibit No. 6.)

[See pages 261-267.]

Mr. Schei: Q. Now, that letter contains, among other things, Mr. Drummond, instructions as to what to do in the event the amount of credits in the Government's favor in one month exceeded the amount of charges against the Government, isn't that correct?

A. Yes, sir, and there is a paragraph devoted to that.

Q. And what paragraph is that?

A. Paragraph 11.

Q. On page 3 of the letter?

A. It is on page 3 of the letter, yes, sir.

Mr. Schei: I don't imagine that it is necessary to read that at this time, your Honor.

The Court: Did you offer the letter in evidence?

Mr. Schei: I offered it in evidence, your Honor.

Mr. Lally: Subject to the same objection as we have stated, your Honor.

The Court: Yes.

Mr. Schei: Q. Now, the method of computing such charges as the insurance company might eventually have against the Government was changed, by election of your company, after the 1942 amendment to the Act. That has already been agreed to. Now, thereafter you did not prepare monthly difference reports any more, did you? [62]

A. No, sir.

Q. Did you go back to the beginning of the time

(Testimony of Glenn E. Drummond.)

when policies had been placed under protection and recompute the entire thing in place of a monthly difference report that had been previously submitted?

A. Yes. By our election to take settlement under the provisions of the 1942 Act, the basis of settlement would apply to all policies that had at any time been under the protection of the Act.

Q. Now, have you made at my request a computation of the amount that the Government would have paid to you on account of Mr. Plesha's policy with your company if the computations had been made in accordance with the procedure prescribed by the 1940 Act rather than in accordance with the procedure prescribed by the 1942 Act?

A. I have made such a computation on the basis of my understanding of the 1942 Act, yes, sir.

Q. And would you tell us, if you could, in some detail just what factors you took into consideration and just how you went about making that computation.

Mr. Lally: Might I be heard, your Honor? Is this being presented as expert testimony or as fact testimony? I am not quite clear.

The Court: Well, I take it it is the testimony of an expert. [63]

Mr. Lally: That is my understanding. Is that correct, it is testimony as an expert?

Mr. Schei: Do you want me to qualify the gentleman, or haven't I already?

Mr. Lally: If he is testifying as an expert, I

(Testimony of Glenn E. Drummmond.)

thing he should be, because that goes to the weight of the testimony.

The Court: Then you should qualify him as an expert, his qualifications.

Mr. Schei: I have already to a certain extent, your Honor.

The Court: I don't think you have gone into his experience in accounting.

Mr. Schei: I believe the testimony will show already that he has been with the company for twenty-five years, that he has been in the premium collection department—

The Court: Q. Give us your qualifications in the line of work that you have told us you do.

A. Well, as I have stated, I have been with this company for it will be twenty-five years in March 1 of this year, and I started my employment in the accounting department of the home office of the Western States, which was one of the original companies of which the present company is the outgrowth. I worked in the auditing department when the auditing department was set up for the Western States.

In 1929 I was transferred to their Salt Lake branch office as their branch office cashier, and at that time our [64] company operated on the branch office plan.

In 1931 I was transferred to our Portland branch office as cashier of that office, where I stayed until 1936, when the company elected to close all branch offices as such and bring all premium collection

(Testimony of Glenn E. Drummond.)

matters and policy-owner service matters to the home office, and I have been in the home office in Sacramento here since 1936, and have worked in the premium collection and accounting department.

The Court: I believe the witness can testify as to the computation.

Mr. Byrd: Your Honor, do I understand that the qualifications stated by the witness qualify him to testify as to what the Government should have paid?

The Court: No, as to what he did.

Mr. Lally: And as to the computation only, not as to their materiality or anything else?

The Court: That objection still stands.

Mr. Lally: Very well, your Honor.

The Witness: I believe I stated that I made these computations on the basis of my understanding of the Act.

The Court: You may go ahead now and——

Mr. Schei: Q. Will you explain——

(Thereupon the Court took up another matter.)

Mr. Schei: Q. Will you explain how you made the computations, Mr. Drummond. [65]

A. Yes. I may state at the outset, however, that this computation is a computation of what we would have reported to the Government on monthly difference reports as a delinquent premium for this particular policy from the date the protection began to the date protection ceased.

(Testimony of Glenn E. Drummond.)

I have also made a calculation bringing that total up to a specific date, of January 25, 1949.

The reason I make that statement is that I am unable to say that this is exactly what the Government would have paid to us had we not elected to take the settlement under the 1942 Act, because the formula for the filing of statements under that act was never formulated, to my knowledge, as to just what the settlement date would have been, and I cannot say, because the original Act provided that settlement under the 1940 Act between the Government and the insurance company would be in one year after the Act ceases to be in force.

Q. And the reason for that—was that July 25 or January 25?

A. That was January 25, 1949, the date to which I brought the interest figure up.

Q. And what is the significance of that particular date?

A. In July 1947 the President issued an order or a directive that for the purposes of the Soldiers' and Sailors' Civil Relief Act that the war had terminated as of that date, and that under that declaration that the Act would then actually terminate six months thereafter, which would be in January of [66] 1948, and that since a settlement date with the Government, between the insurance company and the Government under the original Act would be one year after termination of the Act, that would bring the date to January 1949.

Mr. Lally: Your Honor, I haven't had an op-

(Testimony of Glenn E. Drummond.)

portunity to check the specific dates. I therefore interpose the objection. However, I believe the order is a matter that the Court can take judicial notice of.

Mr. Schei: Q. Did you take into account in making these computations any credits from policies other than those of Mr. Kern, Mr. Mabbutt and Mr. Plesha? A. No, sir.

Q. In other words, these computations that you have made here are made just as if these three people were the only insureds that your company was carrying under protection under the 1940 Act, is that right? A. Yes, sir.

Q. Now, you have a sheet here pertaining to the computations on Mr. Plesha, is that right?

A. Yes, sir.

Mr. Schei: Do you wish to look at this again, Mr. Lally?

Mr. Lally: I don't think it would do any good. I certainly can't understand it.

Mr. Schei: This sheet shows here—

The Witness: This is the computations in the settlement [67] that we actually made with the Government.

Mr. Schei: Over on the left-hand side the first one, two, three, four columns to the left of the drawn line here relate to the computations that were made under the 1942 Act, is that correct?

A. Yes, sir.

Q. And they show that the total amount of unpaid premiums was \$343.93, that the cash sur-

(Testimony of Glenn E. Drummond.)

render value subtracted therefrom was \$82.88, showing a difference there of \$261.05?

A. That is correct.

Q. Now, the \$261.05 is the amount that the Government actually paid to you on account of Mr. Plesha's policy, is that correct?

A. That is correct.

Q. Now, what have you done in the next three columns here?

A. In the next three columns—I have made a computation of the premiums that would have accrued and that we would have reported on a monthly difference report, and I have used the loan interest factor as provided by Mr. Plesha's policy.

Q. Which is what?

A. 6 per cent, compounded in advance, and arrived at the total amount of the premiums and interest at loan interest rate that would have accrued during the period that this policy was under protection.

Q. Up to what date? [68]

A. Up to the date of termination of protection.

Q. And what date is that that you have used in that particular portion of your computation?

A. In this particular portion I have used one year after the date of his release from service, which was the expiration of the protection period under the original Act.

Q. All right. Now, what do your computations show there as to the amount that that would have added up to?

(Testimony of Glenn E. Drummond.)

A. They indicate that a total indebtedness of \$312.65 covering premiums and interest had accrued and that the cash value and dividend value at the expiration date was \$65.75 for the cash value, \$27.29 for dividends and interest, both being subtracted from the total indebtedness would have shown that a net was due of \$219.61.

Q. In other words, computing the amount in this particular manner you get a result of \$219.61 instead of a result of \$261.05?

A. That is correct.

Q. Now, you have two more columns over here to the right. What do those represent?

A. They represent the premiums that we would have listed on our monthly difference reports from the date that the policy was placed under protection to the expiration date of the protection and I applied to that a 3 per cent simple interest factor, which is the interest that we would have received on [69] the certificates that the Government would have issued for those monthly difference reports had this been the only case on the report.

Q. And what does that show?

A. It shows that the total premiums were \$253.86, interest at 3 per cent simple would total \$25.05, making a total of \$278.91, less the cash value of the policy, \$65.75, and dividends and interest of \$27.29, subtracted from the total of premiums and interest, leaving a balance of \$185.87.

Q. Now, this last balance of \$185.87 also car-

(Testimony of Glenn E. Drummond.)

ries the matter to one year after Mr. Plesha's discharge from service, is that correct?

A. That is correct.

Q. And the difference between that figure and the \$219.61 figure is that here you have computed it at 3 per cent simple interest and there it was computed at 6 per cent compound; is that correct?

A. That is correct.

Q. Now, have you carried your figures forward to this date which was one year after the date when the Act would have expired by the presidential order you mentioned?

A. Yes, to January 25, 1949.

Q. And what figures do you have there?

A. The figure for the premium is the same, \$253.86; the interest figure has increased to \$42.29, making a total of [70] \$296.15, less the policy cash value of \$65.75, dividends and interest of \$27.29, leaving the remainder of \$223.11.

Mr. Schei: I ask that this paper that you have just been referring to in your testimony be marked by the Clerk as our exhibit next in order.

Mr. Byrd: It is understood, of course, your Honor, that the Government objects.

Mr. Lally: I might add in that regard, your Honor, that we have not been given any opportunity to gather any evidence of this type ourselves, inasmuch as this was just brought to our attention last evening.

The Court: It will probably require a continued

(Testimony of Glenn E. Drummond.)

hearing of the case and you will be afforded an opportunity to meet it.

Mr. Byrd: May we ask counsel if they can furnish us a copy of this for our examination so that we can meet it?

Mr. Schei: I think we should, your Honor.

The Court: You have a copy?

The Witness: No, sir, I do not, but one can very readily be made.

Mr. Schei: If this might be agreed, that this may be marked by the Clerk now as offered in evidence——

The Court: And I will let you withdraw it to make a copy of it and furnish it to the Government.

Mr. Schei: And I may do that at any time, your Honor? [71]

The Court: Yes.

Mr. Schei: Very well. I think for the purposes of clarity, I particularly wanted this one marked with a number so that it is clear as to what I was referring to from the reporter's record,——

The Court: Well, it is marked..

(Computations as to Plesha policy No. 419814 were marked Plaintiffs' Exhibit No. 7 for identification.)

[See page 268.]

Mr. Schei: (Continuing) ——for identification, and it is understood that I will prepare copies of this—prepare a copy of this and of all exhibits which are immediately to follow, which are of sim-

(Testimony of Glenn E. Drummond.)

ilar nature; and furnish a copy to Mr. Lally—Do you want two copies, Mr. Lally?

Mr. Lally: Please.

Mr. Schei: And then offer this in evidence subject to the objection that it is not material.

Mr. Lally: Subject to any objection, your Honor.

The Court: Now, wait a minute. "Subject to any objection"——

Mr. Lally: When it is offered in evidence aren't we then given an opportunity to object? It is not being offered in evidence at this time, your Honor. I don't know what objections might be pertinent until we have an opportunity to examine it.

Mr. Schei: I have no objection to their having an opportunity to examine it. [72]

The Court: I see that we will have to have a continued hearing on this case to voice your objections. I don't want a blanket objection on all grounds. That is not fair to the Court.

Mr. Lally: By the same token, your Honor, I don't want to stand by and let them go in evidence when I don't know what it is all about.

The Court: It is not in evidence; it is just marked for identification.

Mr. Schei: Will you mark these three next in order for identification.

(Computations as to Kern policies Nos. 428-642 and 395773, and Mabbutt policy No. 420558 were marked Plaintiffs' Exhibits Nos. 8, 9 and 10 for identification.)

[See pages 269-271.]

(Testimony of Glenn E. Drummond.)

Mr. Schei: Your Honor, I believe the pleadings and other records will show that the plaintiff Myron Kern had two policies under protection of this company, one in the face amount of \$2000 and one in the face amount of \$3000, and that the plaintiff James Mabbutt had a policy in the face amount of \$2500 with this company.

Q. Now, I will show you Plaintiffs' Exhibit No. 8 for identification, Mr. Drummond—

The Court: Weren't those prepared in the same manner as the others were?

The Witness: Yes. [73]

Mr. Schei: That is just what I was going to ask.

The Court: And the testimony would be the same as you gave in connection with the questions as to No. 7?

Mr. Schei: As to No. 7.

The Witness: That is correct.

Mr. Schei: Except, of course, the figures read off—

The Court: Oh, yes.

The Witness: And the dates as far as the expiration dates.

The Court: But the explanation—

The Witness: The explanation would be exactly the same, yes.

Mr. Lally: The same objection, your Honor.

Mr. Schei: Plaintiffs' Exhibit No. 9 for identification refers to one of Mr. Kern's policies?

A. Yes, sir.

(Testimony of Glenn E. Drummond.)

Q. And Exhibit No. 8 for identification refers to another of Mr. Kern's policies? A. Yes, sir.

Q. And Exhibit No. 10 for identification refers to Mr. Mabbutt's policy? A. Yes, sir.

The Court: It is understood these are all offered in evidence and the ruling thereon will be reserved.

Mr. Schei: I will not leave them with the Clerk now, [74] but I will take them with me for reproduction.

Mr. Lally: I understand they are not being offered at this time; they are being marked for identification?

The Court: They are marked for identification. Have you identified them, Mr. Clerk?

The Clerk: Yes, they are all identified, for identification.

Mr. Schei: Q. Now, Mr. Drummond, have you checked the records of the California Western States Life Insurance Company to determine whether any of the policyholders of your company who had their policies protected under the Soldiers' and Sailors' Civil Relief Act of 1940 prior to its amendment died prior to the expiration of their service with the United States during World War II?

A. To my knowledge there have been none. I think that the policy payment department has furnished a letter to someone to that effect. To my knowledge there has been no death claim, because there was no death claim reported to the premium collection department, and we at no time showed

(Testimony of Glenn E. Drummond.)

a credit from a death claim on our monthly difference reports, so to my knowledge there was no death claim prior to the time the Act was amended in 1942.

Mr. Schei: Your Honor, I have a letter here from Mr. H. G. Hewitt, Second Vice President and Manager of the Policy Payment Department of the California Western States [75] Life Insurance Company, which is to the effect that he has checked these records concerning deaths of any of these policyholders, and that he has found that eight policyholders, with the policy numbers given in this letter here, died prior to the time their policies came out from under protection of the Soldier's and Sailor's Civil Relief Act.

Mr. Lally: This is a representation, is it not, rather than evidence?

Mr. Schei: That is right. That is right. I was wondering if we could have a stipulation that if Mr. Hewitt were called to testify that he would so testify?

Mr. Lally: I can't so stipulate, because these records are here in Sacramento and we can examine them, and if we were given an opportunity to examine them we could so stipulate, but I can't so stipulate when I don't know.

Mr. Schei: Very well. Might I ask, your Honor, that at the time this case is heard further we might have permission to recall Mr. Hewitt on that matter?

The Court: Yes, and I think perhaps if the

(Testimony of Glenn E. Drummond.)

records are available you might show them to Mr. Lally and he will stipulate to them.

Mr. Lally: That is my only thought, your Honor. I just don't like to stipulate to something that I don't know anything about.

Mr. Schei: Q. Have you made a computation concerning [76] what would have happened on a monthly difference report if the policy of a man by the name of Clover were considered?

A. Yes, sir.

Q. Do you have that with you?

A. (The witness produces a document.)

Mr. Schei: Do you wish to see this now (exhibiting document to counsel)?

Mr. Lally: Showing that to me now certainly doesn't help me, Mr. Schei, because it would take an actuary and graduate mathematician in order to understand that, and this is the first opportunity we have had to see it.

Mr. Schei: Copies of this will be furnished, your Honor, as soon as we have had it explained. Might I ask the Clerk to mark this as our exhibit next in order for identification?

(Computations as to Clover policy No. 422036 were marked Plaintiffs' Exhibit No. 11 for identification.)

[See page 272.]

Mr. Schei: Q. Now, I hand you Plaintiffs' Exhibit No. 11 for identification and ask you what that is, Mr. Drummond.

A. This is a computation similar to—not in all

(Testimony of Glenn E. Drummond.)

details—to the computations previously discussed covering the policy of one Glenn Clover, whose application for protection under the Soldiers' and Sailors' Civil Relief Act was approved by the Government effective in March 1951, which would have been the original Act. [77]

Mr. Clover, incidentally, is still in the service and his policy is still under the protection of the Act, and this computation is his indebtedness up to March 28, 1953.

Mr. Lally: Do I understand that the man is testifying to the fact that the man is still in the service and still under protection of the Act—

The Court: I take it that would mean according to his records.

Mr. Schei: Q. That would be your testimony?

A. That would be my testimony, that so far as our records are concerned, they show this man is in the service at present and his policy is receiving the protection of the Act, and based on the settlement as provided of the 1942 amendment. It is one computation.

Q. Yes. And you have shown what the total obligation of the Government to the company under the 1940 Act to date is as far as that policy is concerned under that particular—

A. Yes, under the 1940 Act and the 1942 amendment.

Q. Both ways? A. Yes, sir.

Q. Now, you have checked the records of the various policies of the California Western States

(Testimony of Glenn E. Drummond.)

Life Insurance Company which were under the protection of the Soldiers' and Sailors' Civil Relief Act prior to this amendment in 1942, is that correct? [78] A. Yes, sir.

Q. Now, were any of those policies reinstated by the man paying the back premiums when he came out of the service? A. Yes, sir.

Q. Have you any idea how many?

A. From a check that I made of those who were under the protection of the original Act, I can testify that there are thirty-eight of those where the policy owner either paid his premiums in cash to take care of his obligation or there was sufficient value in the policy to take care of them for him, so there was no reason for us to file a claim with the Government.

Q. Now, did you make any computations as to how the monthly difference report would have been affected by the death of one policyholder?

A. I have made a computation of the premiums and interest accumulation on one policy owner whose policy did become a claim.

Q. And do you have that with you?

A. (The witness produces a document.)

The Court: Mr. Schei, when I asked you how much more time this was going to take you said it would be very short.

(Discussion between Court and counsel as to length of time to conclude case.)

Mr. Schei: May this be marked, Mr. Clerk? [79]

(Testimony of Glenn E. Drummond.)

(Computations as to McDaniel policy No. 420358 were marked Plaintiffs' Exhibit No. 12 for identification.)

[See page 273.]

Mr. Schei: Q. Mr. Drummond, I hand you Plaintiffs' Exhibit No. 12 for identification and ask you what that is.

A. This is a computation that was made showing the total number of the premiums that were due and would have been reported to the Government under the 1940 Act from the date of protection to the date of death, increased by interest at 6 per cent, compounded, showing the total indebtedness that would have been deducted from the claim paid under this policy.

Q. And which particular policy does that relate to?

A. This is on one McDaniel, whose policy was placed under the protection effective in March 1941 and he died in February 1945.

Q. I hand you, Mr. Drummond, the file relating to Kern and ask you what that is.

A. This is our home office application folder covering this particular policy.

Q. And which policy is that?

A. Policy No. 395773 issued to one Myron Kern.

Q. On what date?

A. The policy was issued the effective date of December 31, 1938.

Q. And what was the amount of the policy?

A. The amount of the policy was \$2000. [80]

(Testimony of Glenn E. Drummond.)

Q. Can you tell from that record, Mr. Drummond,—that is an original file record of the California Western States Life Insurance Company?

A. That is correct.

Q. Can you tell us from that record what form of policy was issued to Mr. Kern?

A. The plan of insurance was endowment at age 60, twenty premiums—do you want the form number of it?

Q. The form number of the policy, please.

A. The form number of the policy issued was 224-14. [81]

* * * * *

Mr. Byrd: Just a moment, your Honor, if I may. It is very unlikely that I will come back when the case is up again, and during the recess today I had an understanding with counsel for the plaintiff with reference to the statement on the stand—the statement that we didn't have to have testimony with respect to the special dividends and the fact that there is no disagreement that the Government applied the special [83] dividends which were withheld by transferring them to the appropriations of the Soldiers' and Sailors' Relief Act, the amount of dividends so applied by the Veterans Administration of the United States.

Mr. Schei: As I understand it, your Honor, and I certainly would be willing to stipulate if this is a fact, and you correct me if I am inaccurate, that the amount of the dividend to which each of these three gentlemen was entitled was computed, and

then offset against that was the amount that the Government had previously paid to the California Western States Life Insurance Company on account of the guarantee or whatever it was of these premiums, and that the balance, if any, was paid to these three plaintiffs.

Mr. Byrd: Yes.

Mr. Schei: I think in each case there was a balance. And further that difference—to be specific, in the case of Mr. Plesha in the amount of \$221.25, was taken from the dividend fund of the National Service life insurance—

Mr. Byrd: Yes.

Mr. Schei: —and applied to reimburse the Soldiers' and Sailors' Civil Relief fund for the amount that was taken out of that; is that correct?

Mr. Byrd: That is correct, and there is no dispute that these three plaintiffs were paid the difference?

Mr. Schei: They were paid the difference, that is correct.

(Thereupon the further hearing of this matter was continued until Friday, February 27, 1953, at 10:00 a.m.) [84]

• • • • •

MARCUS GUNN

called for the plaintiff; sworn.

Mr. Lally: First, your Honor, before Mr. Schei begins his questioning I would like to reserve the same objection we had heretofore as to the reception of all the testimony that has been presented, that we reserve as to each thing the objection of materiality, relevancy and competency, the thought in mind being that this whole trend that Mr. Schei is purporting to present is not actually appropriate to the issues of the case. [85]

I believe your Honor will recall when Mr. Byrd was here, and Mr. Schei and myself at the hearing the other day, we reserved our objections.

The Court: Very well.

Mr. Lally: It will be understood that the objection as to the relevancy, materiality and so forth is reserved.

Direct Examination

Mr. Schei: Q. Would you give us your name, sir? A. Marcus Gunn.

Q. And what is your employment, sir?

A. I am vice president and actuary of the California Western States Life Insurance Company.

Q. And how long have you held that position?

A. Oh, in excess of fifteen years. I have been either actuary or associate actuary for the Company or one of the constituent companies for twenty-eight and a half years.

Q. What formal education did you have, Mr. Gunn, prior to your employment?

(Testimony of Marcus Gunn.)

A. University of Oregon, four-year course in insurance and actuarial science.

Q. And when did you complete that education?

A. 1914, and then I pursued a formal course of study to become a Fellow of the American Institute of Actuaries, now the Society of Actuaries, and became a Fellow of the Institute in about 1920.

Q. Following the completion of your education would you tell us what experience you have had in the insurance business.

A. For the first ten years, with the exception of two years in the Army, I was in consulting actuarial work preparing policy forms, life insurance policy forms, and wrote books and doing other actuarial work for numerous smaller companies. Beginning in 1922 I was assistant actuary of the American Central Life Insurance Company of Indianapolis, and then joined one of our constituent companies, as we call them, in 1924, the Western States Life Insurance Company of San Francisco, as actuary.

Q. And you have been associated with either Western States Life Insurance Company or its consolidated company, California Western States Life Insurance Company—

A. California Western States Life Insurance Company.

Q. —since 1924? A. Yes, sir.

Q. And you have been doing actuarial work during all of that time? A. Yes, sir.

Q. As a part of your work have your duties

(Testimony of Marcus Gunn.)

required you to examine and compare policy forms issued by various life insurance companies in the United States?

A. Yes. We have to keep informed generally on the wording and practices of our competitor companies. [87]

Q. And have you made examinations of various policy forms issued by other companies?

A. Over the years, yes.

Q. Would you say that you have examined policy forms from most of or all of the major companies?

A. More than half of the major companies.

Q. And will you name some of the companies whose forms you have examined.

A. New York Life Insurance Company, Metropolitan Life Insurance Company, Prudential Insurance Company, New England Mutual Life Insurance Company, Connecticut General Life Insurance Company, Pacific Mutual Life Insurance Company, West Coast Life Insurance Company, and numerous others.

Q. In your present position as vice president and actuary of the California Western States Life Insurance Company do you have responsibility for the form of policies which are issued by that company?

A. Yes, sir.

Q. Such as the ultimate decision of the form of policies issued?

A. Yes, as to the wording. The policies are also

(Testimony of Marcus Gunn.)

reviewed and have to meet the approval of the legal department.

Q. Do you feel that you have a general familiarity with the provisions of the various life insurance companies in the United States concerning the method in which payments are to [88] be paid and how policy loans are to be handled?

A. Yes, sir.

Mr. Lally: Your Honor, I wish to move—just make an objection to the question as calling for an opinion and conclusion of the witness—

The Court: Overruled.

Mr. Lally: —rather than whether or not he actually was cognizant of the fact.

The Court: Overruled.

Mr. Schei: Q. Now, in the year 1940 how did the policy forms of the various life insurance companies with which you are familiar cover the matter of the effect of the failure to pay premiums? Did such policies provide in effect that unpaid premiums would be a debt of the insured, or what was the provision in that respect?

A. In that respect there would be two classes of policies: those such as term policies, which had no cash or loan values, and all other individual life insurance policies which have loan and cash surrender values and other surrender values.

Q. Now, what would the provision of term insurance policies be with regard to the effect of failure to pay premiums?

A. If a premium due is not paid prior to the

(Testimony of Marcus Gunn.)

end of the grace period, ordinarily a month after premium is due the policy would terminate without value.

Q. In that form of policy, if the insured failed to pay [89] that premium would he become—under the language of the policies with which you are familiar, would he become liable personally to pay that premium to the insurance company?

A. No, sir.

Q. The effect, then, of failure to pay premiums under the term insurance policy was that the policy would lapse? A. That is right.

Q. Now, would you tell us what the effect of failure to pay premiums on these other policies would be, those which did have cash values.

A. In the event that any payment due on any such policy with loan values was not paid during the grace period, either before the due date or within the grace period of one month, ordinarily not less than thirty days after the due date, the policy would lapse, and if the insured did not make other selection, the value would be applied automatically to provide ordinarily an extended insurance value; although in some policies it is a paid-up insurance value for a reduced amount; in other policies there is what is called an automatic premium loan provision whereby a policy loan is automatically effected to produce sufficient proceeds to pay the premium, or in the event the insured makes a selection within a required period, or so elects

(Testimony of Marcus Gunn.)

within a stipulated time in the policy, he may take the surrender value, the cash surrender value.

Q. Then would it be accurate to say that the principal difference [90] so far as this application—I mean so far as the effect of failure to pay premiums is concerned, the principal difference between the term policies and these other policies that have cash value is that the cash values that are there may be used to give additional insurance for a period of time or may be paid to the insured? Is that generally correct?

A. Yes. I wouldn't say additional insurance. Sometimes it is a lesser amount, and sometimes—in the case of paid-up value and in the case of extended insurance value it is usually the face amount extended for a limited period.

Q. But continued failure to pay premiums on that type of policy having cash value would ultimately result in the policy being terminated or lapsing; is that correct?

A. Yes, sir. The usual language of the policy provides for the—in the case of the automatic premium loan—that is one situation that some—only part of the policies in force in the country generally have that provision—where that provision is included the successive premiums are added to the indebtedness until the time the indebtedness would equal or exceed the loan value of the policy, and at that time the policy would terminate without further value. In the event of the extended insurance option for the face amount, eventually the

(Testimony of Marcus Gunn.)

period of extended insurance would run out, although it may last for many years and then expire without value and without further insurance. [91]

In the case of paid-up insurance value, the paid-up insurance is for such reduced amount, ordinarily, as the value in the policy will provide for the original term of the policy in the reduced amount, and may run for the life of the policy—would run for the life of the policy in the case of a whole life policy, and run to the original maturity date in the case of an endowment policy.

Q. Now, with regard to the policies that would have cash value, are there any policy forms which make the payment of premiums an obligation—a personal obligation of the insured?

A. No, I have never heard of or seen a policy of any company that created such an obligation.

Q. Now, would the testimony that you have given here be substantially true today? I was asking you as of 1940.

A. I understand.

Q. Have there been any substantial changes in these particular practices you have testified to?

A. No, sir, no substantial change.

Q. Now, in the period of ten years prior to 1940 would your testimony be any different if it were directed to that period of time?

A. No, sir, it would be the same.

Q. Now, I would like to ask you some similar questions about the provisions in the various forms of policies in the year 1940 so far as policy loans are concerned. Did most of the [92] policy forms

(Testimony of Marcus Gunn.)

with which you are familiar, other than term insurance now, have provisions in them with regard to the making of policy loans?

A. Generally all such policies, with rare exceptions, have provision for policy loans.

Q. Do those policy loan provisions fall into a pattern? I mean, are they ordinarily of similar character? A. Very much so, yes.

Q. Can you tell us what the ordinary or usual pattern for such a provision is?

A. They provide first for the deduction from proposed loan proceeds of any unpaid premiums or any past due interest on existing loans, and for the deduction of the amount of any existing indebtedness. Then they provide in the case of a great many companies for a deduction of interest on the current loan to the end of the current policy year.

Some companies, however, will not deduct the interest in advance and will collect it on the next anniversary date.

Loans provide for payment of interest annually thereafter either in advance or on a graduated basis at the end of each policy year, according to the general plan of the company in that respect. They all provide that if interest is not paid when due that it shall be added to the principal of the loan and thereafter bear interest in the same manner as the principal of the loan. They have a provision that when the indebtedness [93] equals or exceeds the loan value of the policy, which is ordinarily equal to the cash value, that if the interest

(Testimony of Marcus Gunn.)

and premiums then due have not been paid, so as to increase the loan value further, they provide that the policy shall terminate without further value.

Q. Now, the loan that could be made against the cash value of the policy or the loan value of the policy might be a cash loan, might it not? In other words, the insured might actually get some money from the insurance company?

A. Yes. And ordinarily a policy loan would be made for the purpose of furnishing cash loans to the insured.

Q. I believe you previously testified it might also be used for the purpose of paying premiums; is that correct?

A. Yes. It might be a loan requested by the insured to furnish proceeds just sufficient to pay the current premium due. That would be called ordinarily a premium loan. Then sometimes the loan is provided for by an automatic provision of the contract, so that in the case of failure to pay premiums the automatic loan provision takes effect and a loan is automatically made to produce proceeds to pay the premium.

Q. I believe you have already testified that if the loan were not repaid and the loan principal plus accrued interest came to the point where it would equal or exceed the loan value of the policy, that the policy then would be terminated. Now, would there be any other result of failure to pay that [94] loan? What I am getting at is, if the

(Testimony of Marcus Gunn.)

loan were not paid when due could the insurance company collect it from the insured?

A. No, I have never seen or heard of a policy or a life insurance company that created any obligation for the insured to make any payments in such event.

Q. Is there some language in the standard policy loan provisions, those that you are familiar with, something to the effect that the loan shall be on the sole security of the policy?

A. Yes, ordinarily there is language to that effect, a loan is made on the sole security of the policy.

Q. That particular language, would you say that is in general used in these policy forms that you have examined?

A. Yes, sir.

Q. Now, again I have asked you about the practices of the year 1940. Have there been any substantial changes in those practices with regard to policy loan provisions since the year 1940?

A. There have not.

Q. And what about the ten years prior to 1940, was the matter handled differently in those policies during that period of time?

A. No.

Q. Now, one other matter, Mr. Gunn, I would like to ask you [95] about. You have spoken of interest on these policy loans. I would like now to ask you what your knowledge is as to the rate of interest that was being charged for policy loans by the companies with which you are familiar in the year 1940.

(Testimony of Marcus Gunn.)

A. Usually 5 per cent per annum, by some companies payable in advance, by some companies payable at the end of each policy year. However, some companies were still charging 6 per cent and some—at least on their larger loans—were charging somewhat less than 5 per cent.

Q. Were there any that were charging as little as 3 per cent on policy loans?

A. No, I never heard of any rate under 4 per cent, and I would say that 4 per cent was extremely rare and only in very special instances.

Q. Now, what about the situation since 1940, has there been any substantial change in the rates of interest charged for policy loans since that time?

A. Not since 1940 that I have heard of. There was a change downward possibly during the previous decade. At that time interest rates came down generally, and many companies that had charged 6 per cent then reduced to 5 per cent. I am not prepared to give you the exact dates of those changes, but—

Q. Well, would there be any companies that are now charging as little as 3 per cent interest on their policy loans?

A. I am satisfied that there is no company in the business [96] charging interest as low as 3 per cent.

Q. And the trend generally that you have mentioned is to charge a somewhat lower rate of interest than was charged in years back, is that correct?

(Testimony of Marcus Gunn.)

A. The trend somewhat prior to 1940 was somewhat downward. Many companies from 6 per cent to 5 per cent, and some few companies from 5 per cent to, say, $4\frac{1}{2}$ per cent or maybe as low as 4 on exceptionally large policy loans.

I am not prepared to testify in detail with respect to that.

Mr. Schei: I have no further questions.

Mr. Lally: No cross examination, your Honor.

Mr. Schei: Thank you very much, sir. Would it be satisfactory for Mr. Gunn to leave now, Mr. Lally?

Mr. Lally: I have no objection.

Mr. Schei: Thank you very much, sir.

I would like now to call Mr. H. G. Hewitt.

H. G. HEWITT

called for the plaintiff; sworn.

Direct Examination

Mr. Schei: Q. Would you give your name, sir?

A. H. G. Hewitt.

Mr. Lally: Your Honor, so that I might not be deemed to have waived any of our objections, I would like to again state [97] our position for the record as to this particular witness also.

The Court: Very well.

Mr. Schei: Q. What is your business, Mr. Hewitt?

A. I am vice president and superintendent or.

(Testimony of H. G. Hewitt.)

manager of our policy payment division, California Western States Life Insurance Company.

Q. And how long have you held that position?

A. Oh, I think I was made vice president in about 1945 and I held the other position since about 1931.

Q. And how long have you been employed with the California Western States Life Insurance Company?

A. California Western States Life and its associate company, Western States Life, for twenty-nine years.

Q. Now, your duties include, do they not, the handling of death claims? A. They do, yes.

Q. And you are the person primarily responsible for the handling of death claims, is that correct? A. That is correct.

Q. How long has that been true?

A. Well, the entire period of time.

Q. Ever since 1931? A. 1931.

Q. Now, do you in your capacity as the manager of that department have custody of the records pertaining to death claims? [98]

A. I do, yes.

Q. And at my request have you checked through the death claims records of California Western States Life Insurance Company to see how many persons carrying life insurance with your company whose policies of life insurance were protected under the Soldiers' and Sailors' Civil Relief Act of 1940 prior to its amendment on October 6, 1942

(Testimony of H. G. Hewitt.)

died during the period their policies were under protection? Have you made such a check?

A. Yes, I made such a check.

Q. And what were your findings?

A. Well, I found—I don't know how many cases there are, but I simply asked for them to find the number of cases which came—under which that situation existed, and I have eight cases here which came under the Soldiers' and Sailors' Civil Relief Act of 1940 and which were paid as death claims.

Q. Now, in all of those cases, those eight cases that you mentioned, were the policies placed under protection under the Soldiers' and Sailors' Civil Relief Act before October 6, 1942? A. Yes.

Q. They were approved for protection under that Act prior to October 6, 1942 by the Veterans Administration of the United States?

A. That is correct.

Q. That is true of all of those eight cases? [99]

A. That is true of all eight cases.

Q. And in addition all of those eight cases became death claims while the policies were still under protection? A. That is correct.

Q. Do you have a list there of those eight policies— A. Yes.

Q. —those eight cases? A. I have.

Q. Now, would you give us the policy number and the name of the first case on your list.

A. The number is 42 03 42, and the last name is Watson.

(Testimony of H. G. Hewitt.)

The next case is 42 03 58, and the last name is McDaniel.

The next one is 42 21 03, and the last name is Jensen.

The next one is 42 02 94, and the last name is Hansen.

The next one, 41 05 43, the last name is Moore, Jr.

The next one is 40 46 31, and the last name is Pollitz.

The next one is 42 03 14, and the last name is Cannings.

And the eighth case is 42 03 19, and the last name is Capps.

Q. Now, in each of those eight cases your company paid the face amount of the policy with some additions and deductions, is that correct?

A. That is correct.

Q. And would you take the first one in your list there—we won't go through all of these—and tell us how you arrived at [100] the amount that was actually paid to the beneficiaries named in that policy.

A. Well, the face of that policy was \$2500. There were coupons and dividends for \$25.56. There was a deduction of \$192.62, or the amount which was deducted under the Soldiers' and Sailors' Relief Act of 1940, making a net of \$2,332.94.

Q. This amount of \$192.62 that you mentioned was for premiums which had become due on that policy since it was placed under protection of the

(Testimony of H. G. Hewitt.)

Soldiers' and Sailors' Civil Relief Act and prior to the death of the insured, is that correct?

A. That is correct.

Q. And was there any interest added to those premiums?

A. There was 6 per cent interest compounding annually.

Q. And that was in accordance with the policy loan provisions of that particular policy?

A. That is correct.

Q. And the amounts paid for the other seven cases that you mentioned were all computed in a similar manner, is that correct?

A. That is correct.

Q. And in each of those other seven cases there were amounts deducted from the amounts paid to the beneficiaries by reason of unpaid premiums and interest thereon, on those unpaid premiums, since the policy had been placed under protection under the Soldiers' and Sailors' Civil Relief Act, is that correct? [101]

A. That is correct.

Mr. Schei: In each case there was a similar deduction for that purpose.

I have no further questions. Any questions, Mr. Lally?

Mr. Lally: No questions, your Honor.

Mr. Schei: Thank you very much, sir.

Might this witness also be excused?

Mr. Lally: No objection.

Mr. Schei: I would like now to recall to the stand Mr. Glenn Drummond.

GLENN E. DRUMMOND

recalled for the plaintiff; previously sworn.

The Clerk: Let the record show this witness was heretofore sworn. His name is Glenn E. Drummond.

Mr. Lally: Might we reserve our same objection so far as this witness's testimony is concerned, your Honor?

Direct Examination

Mr. Schei: Q. Mr. Drummond, you are the same Mr. Drummond who testified here in this matter in the latter part of January of this year?

A. Yes, sir.

Q. Mr. Drummond, I have a copy of the transcript of your testimony at the prior hearing, and on page 51, line 6 and following, the following question was asked and the following [102] answer given:

"Q. And what is your capacity with the California Western States Life Insurance Company now, Mr. Drummond?"

"A. At the present time I am the assistant manager of the premium section department."

Is that a correct statement of your position, sir?

A. It is the premium collection department.

Q. The word "section" should have been "collection"? A. "Collection."

Mr. Schei: There are, your Honor, several other places on that page where the same error appears. The proper name of the department where you are is the name "premium collection department," is that correct? A. Yes, sir.

(Testimony of Glenn E. Drummond.)

Q. Now, inviting your attention to your testimony transcribed on page 75, I asked you this question, beginning at line 8 on that page:

"Q. Now, Mr. Drummond, have you checked the records of the California Western States Life Insurance Company to determine whether any of the policyholders of your company who had their policies protected under the Soldiers' and Sailors' Civil Relief Act of 1940 prior to its amendment died prior to the expiration of their service with the United States during World War II?"

, And your answer was: [103]

"To my knowledge there have been none. I think that the policy payment department has furnished a letter to someone to that effect. To my knowledge there has been no death claim, because there was no death claim reported to the premium collection department, and we at no time showed a credit from a death claim on our monthly difference reports, so to my knowledge there was no death claim prior to the time the Act was amended in 1942."

Now, the latter part of that question there referred to a period of time prior to the 1942 amendment to the Act, but my question was intended to cover the period of time when the policies were under protection.

A. Apparently I misunderstood your question. I answered on the assumption that you were asking, Were there any death claims settled prior to the enactment of the 1942 amendment?

Q. Your answer to that would be what?

(Testimony of Glenn E. Drummond.)

A. No, sir.

Q. And what about after that?

A. There were death claims reported and settled after enactment of the 1942 amendment on policies that had been protected under the original Act of 1940.

Q. All right. Thank you. Now, during your testimony before you had with you California Western States Life Insurance Company's copies of various monthly difference reports?

A. That is correct. [104]

Q. You have those with you again today?

A. Yes, sir.

Mr. Schei: Your Honor, we would like to put into the record a photostatic copy—we will introduce the original, and then if we may withdraw it and put in photostatic copies of one of these monthly difference reports.

Mr. Lally: Same objection, your Honor, as to the competency and relevancy and materiality.

The Court: What was the comment?

Mr. Lally: The same objection, your Honor, as to this document. I believe it has been the understanding a reservation as to the ruling on all this as evidence would be briefed, and I wanted to make my position clear before it is in evidence. Perhaps it could be marked for identification.

Mr. Schei: Would it be satisfactory if we considered the photostat as the original and have that marked, your Honor?

The Court: Yes.

(Testimony of Glenn E. Drummond.)

(The document referred to was marked Plaintiffs' Exhibit 13 for identification.)

[See page 274.]

Mr. Schei: Mr. Drummond, I hand you Plaintiffs' Exhibit 13 for identification, these two photostat sheets. Now, of what is that a reproduction?

A. A reproduction of the monthly difference report for the month ending July 31, 1942.

Q. And how, if you know, was that photostatic copy prepared? [105]

A. It was prepared from the original that I have in my file and it was prepared in our office today.

Q. Now, there are two sheets here. What are those?

A. The one with the heading, "Monthly Difference Report, Veterans Administration Insurance Form 382," is the face of the report, and the second sheet is the reverse side of the report.

Q. These are two sides of the same piece of paper?

A. Two sides of the same piece of paper, yes.

Mr. Schei: Would you like to compare these with the one from the file, Mr. Lally?

Mr. Lally: That is a document you furnished me, is it not?

Mr. Schei: Yes. That is this one (indicating).

Mr. Lally: No, I have no objection to the photostat being substituted in lieu of the original.

Mr. Schei: I was wondering, did you want to

(Testimony of Glenn E. Drummond.)

compare that with the one that is in the California Western States Life Insurance Company's files?

The Witness: It is only one piece of paper.

Mr. Lally: No.

Mr. Schei: I would like to offer this in evidence, your Honor.

Mr. Lally: Your Honor, could we ask that it be marked for identification rather than received in evidence, in view [106] of our objection?

The Court: Very well. I will rule on the admissibility later on.

Mr. Schei: It is understood, however, it has been offered?

The Court: Pardon me?

Mr. Schei: It is understood, however, it has been offered?

The Court: Yes.

Mr. Schei: Q. Now, we have previously shown you, Mr. Drummond, a number of calculations which you have prepared which have been marked for identification as Plaintiffs' Exhibits Nos. 7, 8, 9, 10, 11 and 12. You prepared all of those, did you not? A. Yes, sir.

Q. Would it be correct to say that the method of calculation used was the same as to all of them?

A. That is correct, with the exception of the different dates involved.

Q. And different people involved, different amounts of money?

A. Different people involved and different amounts of money and different dates.

(Testimony of Glenn E. Drummond.)

Q. But the system used in computing it was the same for all? A. Same for all, yes.

Q. They were all based on the same assumptions of fact so far [107] as the basic law is concerned, and so on? A. Yes, sir.

Q. I would like to offer these exhibits in evidence, your Honor.

Mr. Lally: I request the same thing, your Honor, that they be marked for identification.

The Court: They will be marked for identification and the ruling will follow later on.

Mr. Lally: One further thing, your Honor. As your Honor will remember, at the last time photostatic copies were made available to us. We have no quarrel with the mathematics, only an objection to the relevancy of these figures to the particular case at issue. The mathematics we concede to be correct.

The Clerk: Plaintiffs' Exhibits 7, 8, 9, 10, 11 and 12 for identification.

Mr. Schei: I have no further questions. Cross examine.

Cross Examination

Mr. Lally: First, your Honor, by cross examining the witness I want it clearly understood for the record we are not waiving the objections heretofore made. I don't like to be repetitious, but I have to be sure that these things are done in connection with my instructions, your Honor.

Q. Mr. Drummond, there are one or two things I wanted to ask you: Could you tell me, please,

(Testimony of Glenn E. Drummond.)

whether or not it is true [108] that the Government actually paid your insurance company the premiums which accrued on the policies of Mabbutt, Kern and Plesha, the plaintiff and the two plaintiffs in intervention in this case, whether or not it is true that the Government actually paid the company the premiums which accrued during the period that the protection was afforded by the Government, with the interest at the policy loan rate from their respective accrual dates?

A. Yes, they did, less a deduction for whatever value the policy had at the date of settlement.

Q. They actually paid them the premiums which had accrued during the protection period with interest at a policy loan rate of 6 per cent?

A. Yes, sir.

Q. And this is the same amount that the company carried on its records as the amount to be paid by the insured to the company, or charged against the policy as a loan—as a condition of continuing the policy; is that not correct?

A. That is correct.

Q. That is, to continue them in effect after termination of protection afforded them by the Government?

A. That is right.

Q. I guess to put it a different way, Mr. Drummond, it is the amount that would be required by the company to be charged against the policy as a loan or paid if the man wanted to keep [109] the policy in effect?

A. Well, the amount that the Government paid

^B(Testimony of Glenn E. Drummond.)

to us is the amount that was in excess of the policy loan value.

Q. We are speaking now, though, of the amounts that were carried on your records as the amounts that had to be paid by the insured or charged against his policy as a loan if he wanted to continue his policy after the Government had canceled their protection, if he wanted to keep it in effect.

A. That is correct.

Q. And that is the same amount?

A. That is correct.

Q. The amount we spoke of just a moment ago?

A. That is correct.

Q. Now, these computations that have just been handed to the Clerk and marked for identification were all made on the basis of a certain assumed factual situation?

A. That is correct.

Q. And also certain assumed legal conclusions?

A. Yes, sir.

Q. Particularly with relation to the rates of interest that were applicable in the case of each of the plaintiffs, the assumed legal conclusion as to the rate; is that not so?

A. I don't know that I understand what you mean.

Q. Well, perhaps I can cover it a little differently, Mr. Drummond. When you prepared these it was having in mind [110] certain legal conclusions with respect to the rates of interest that would be applicable, at certain rates of interest, assuming those to be the ones in point?

(Testimony of Glenn E. Drummond.)

A. That is correct. In other words, the loan interest rate as provided in the policy and a 3 per cent simple interest rate which was the rate that the Government was allowing on the certificates that were issued on the original value.

Q. Now, it is true, is it not, that settlements made by your company in the cases where certain people died were made on an individual basis at the request of the company?

A. At the request of the company?

Q. Yes. They made an election to treat these under an individual basis under the terms of Section 408 of the Act, did they not?

A. On the amended Act?

Q. That is right.

A. Yes. Well, every one was treated on an individual basis.

Q. So that all these people who died, any settlement made by the Government with respect to these particular people that died was done on an individual basis?

A. That is right.

Q. Now, would you say that the company was paid by the Government more than it was entitled to on those particular cases treated on an individual basis?

A. No. [111]

Q. They were paid at 6 per cent, were they not?

A. That is right, at the loan interest rate as provided in the policy, yes.

Q. Well, if the theory that is attempted to be advanced here today is true, the company would have been overpaid, would they not, if they had

(Testimony of Glenn E. Drummond.)

gotten 6 per cent from the Government on each of those on an individual basis?

A. No, I don't know that they would have been overpaid.

Q. They would have been overpaid at 6 per cent rather than 3, would they not?

A. Yes, but we are speaking of two different acts.

Q. Yes, I appreciate that, but treated on an individual basis they were straight 6 per cent, weren't they?

A. Yes.

Q. Now, if we were to assume that they would all be under the 1940 Act, the company would have been overpaid, would they not?

A. No, because if we were still operating under the 1940 Act we would have given the Government credit for those premiums plus 6 per cent interest. They would have been credited back to the Government.

Q. I know the Act is quite complicated, but what I am trying to elicit, Mr. Drummond, is that the Act had it set up differently before it was amended.

A. That is correct.

Q. And you people decided to treat your cases as under the [112] amended Act individually when you made settlement?

A. That is right.

Q. And it was done at 6 per cent?

A. That is right.

Q. And if we are to accept the theory that is being advanced that the 1940 Act was the one to

(Testimony of Glenn E. Drummond.)

govern those cases, actually your company would have been overpaid, would they not?

Mr. Schei: Your Honor, I would like to object to that question as argumentative and uncertain. The witness can hardly be expected to testify as to what the legal theories are in this case. I think he has testified with clarity as to the manner in which the computation was made. I object to the question as being argumentative.

Mr. Lally: He is your expert; you brought him——

The Court: Overruled.

Mr. Lally: Q. You see what I am driving at, do you not, Mr. Drummond?

A. Yes, I see what you are driving at, with the exception that the company would not have received that, because while we were making deductions from the proceeds, we would have turned around and given the Government credit for them.

Q. But as a matter of actual fact, under the 1940 Act your company would charge the Government less, but in following the new amended Act they were able to charge 6 per cent; the company would actually have obtained more money, would they not? [113]

A. We would not actually have received more money.

Q. But you did if the applicable act was the 1940 Act and not the amended Act, then you would have gotten more than the company was entitled to.

A. But we would have in turn credited the Gov-

(Testimony of Glenn E. Drummond.)

ernment for that, so we wouldn't have gotten it; the Government would get it.

Q. But my point is that by collecting under the 1940 Act and saying that the 1942 Act was applicable would mean that the company would get more than it would have gotten had the 1940 Act been applicable rather than the amended Act.

A. I don't know that I can follow your question.

Q. Well, the computation as you have figured it out under the 1940 Act was almost incomprehensible as to how much they would have had to pay—in other words, that was the basis of your figuring, was it not, on the sheets of paper?

A. Yes.

Q. So if that amount that you attempt to show on those papers had been paid, it would have been a lesser amount than the 6 per cent, would it not?

A. No. Even under the original Act, assuming that there had been no amendment, in the event of a death claim we were to deduct from the proceeds of the death claim all the premiums that had not been paid, plus loan interest rate. That was the provision of the original Act.

Q. But I am talking now about these particular three [114] plaintiffs and their policies. They did not die. We are not concerned with them. We are concerned with the case where your company elected to treat each case individually and charge the Government 6 per cent, on an election granted them by the amended Act. You follow me there?

A. Yes.

(Testimony of Glenn E. Drumbnd.)

Q. Now, if you had not chosen to avail yourselves of that election and had chosen to treat them individually, you would have to have gone under the terms of the 1940 Act before amendment, wouldn't you? A. That is correct.

Q. All right. Now, if you had paid off under that 1940 Act—Pardon me. If the Government had paid you people off under the 1940 Act rather than under the amended Act, they would have paid you less money than they paid you, would they not?

A. That is correct.

Q. Now, they paid you 6 per-cent when they paid you? A. Yes.

Q. Then your company then got more money than if they had been treated under the 1940 Act?

A. On those three individual cases, yes.

Q. On those three individual cases.

A. Yes.

Q. Did they ever complain to the Government that they had gotten more money? [115]

A. No.

Q. Pardon me? A. No.

Q. The company has never to your knowledge ever complained that 6 per cent paid to the company was more than the company was entitled to?

A. Not to my knowledge.

Mr. Lally: I believe that is all, your Honor. Thank you.

Mr. Schei: No further questions.

The Court: Is that all?

Mr. Lally: Anything further?

Mr. Schei: We have no more witnesses, your Honor, but we do have some additional documentary evidence we would like to introduce.

Mr. Lally: I believe you have the policies, do you not, Mr. Schei?

Mr. Schei: Yes.

The Court: I have to take up a criminal matter.

(Thereupon the Court took up another matter.)

The Court: Now I understand there is some documentary evidence you wish to offer?

Mr. Schei: Yes, your Honor.

The Court: All right, let's take it up.

Mr. Schei: It won't take very long. [116]

When we were here before in January, your Honor, we read into the record a portion of the policy of life insurance issued to the plaintiff Paul E. Plesha by California Western States Life Insurance Company on December 6, 1940, policy No. 419,814.

In the course of the discussion and on page 23 of the transcript error was made with regard to whether this policy had an automatic loan provision in it—in looking at the thing quickly I had thought that it did, but apparently the provision is slightly different. It is an automatic non-forfeiture provision.

To avoid any question as to what these policies actually do provide, and by agreement with the United States Attorney, I am going to offer all four of the original policies in evidence.

The Court: Very well.

Mr. Schei: And I ask that the policy just mentioned issued to Paul E. Plesha be marked Plaintiffs' Exhibit No. 14 for identification.

(The policy referred to was marked Plaintiffs' Exhibit No. 14 for identification.)

Mr. Schei: I have here policy of life insurance issued to James E. Mabbutt, Plaintiff in Intervention, by the California Western States Life Insurance Company on December 12, 1940, policy No. 420,558, and I ask that be marked [117] Plaintiffs' Exhibit No. 15 for identification.

(The policy referred to was marked Plaintiffs' Exhibit No. 15 for identification.)

Mr. Schei: I have here a policy of life insurance issued to Plaintiff in Intervention Myron Kern by the California Western States Life Insurance Company on December 21, 1938, policy No. 395,773, and I ask that that be marked Plaintiffs' Exhibit No. 16 for identification.

(The policy referred to was marked Plaintiffs' Exhibit No. 16 for identification.)

Mr. Schei: I have here a policy of life insurance issued to the same man, Plaintiff in Intervention Myron Kern, by the California Western States Life Insurance Company on June 23, 1941, policy No. 428,642, and I ask that that be marked Plaintiffs' Exhibit No. 17 for identification.

(The policy referred to was marked Plaintiffs' Exhibit No. 17 for identification.)

Mr. Schei: It may be, your Honor, that we will at some later date request permission to withdraw these original policies and substitute photostats.

May it be understood I have that permission? I will not do so at this time.

The Court: Yes.

Mr. Lally: We have no objection, your Honor.

Mr. Schei: ~~And~~ I would at this time like to offer these four exhibits, Nos. 14, 15, 16 and 17, in evidence. [118]

The Court: Received.

(The documents previously marked Plaintiffs' Exhibits 14, 15, 16 and 17 for identification were received in evidence.)

[See pages 275-287.]

Mr. Schei: Also to avoid any possible misunderstanding, I would like to make a formal offer in evidence of the written interrogatories, both the interrogatories and the answers which have been given to them. Those are plaintiffs' interrogatories. There were two sets of them, Mr. Clerk, the original set and then one set at some time later.

Mr. Lally: In that connection, your Honor, I would like to be sure that our position in regard to these is in the record, in that it will be clearly understood that our objections run to each of the answers collectively and separately and to the document as a whole, and that those questions will be ruled upon after having been briefed.

The Court: Very well.

Mr. Schei: I would like to make a similar offer in evidence of the written requests for admissions and the answers or admissions which were given in response thereto. There were also two sets of those.

Mr. Lally: I wish to make the same point there, that the ruling be reserved until we have had opportunity to brief that point, as agreed upon before.

The Court: That will be the understanding.

(The first set of interrogatories and the answers thereto were marked Plaintiffs' Exhibit No. 18 for identification; the second set, Plaintiffs' Exhibit 18-A for identification.

The first set of requests for admissions and the answers thereto were marked Plaintiffs' Exhibit No. 19 for identification; the second set, Plaintiffs' Exhibit No. 19-A for identification.)

Mr. Schei: And then to make sure that we have not neglected to offer each exhibit in evidence, I will hereby reoffer in evidence Plaintiffs' Exhibits 1 through 19-A, inclusive.

Mr. Lally: With the same reservation, your Honor.

Mr. Schei: That is understood.

Mr. Lally: Now I have obtained, your Honor, properly authenticated copies of the files of the Veterans Administration in Washington, D. C. dealing with cases that arose under the Soldiers' and Sailors' Civil Relief Act of 1918, and I wish to offer these, my thought being that they establish the administrative practice under that Act, which was the predecessor of the acts in question.

The Court: You are offering that as showing the administrative interpretation of the statute?

Mr. Lally: That is correct, your Honor, the statute that was the granddaddy, so to speak, of this statute that was in force during World War II.

The Court: I think it is appropriate to receive it for that limited purpose.

Mr. Schei: Your Honor, I wish to make an objection to the receipt of these on the ground that they tell only part of the story. If we are to have evidence as to the administrative interpretation of the 1918 Act we should have a more complete story than that that is presented in these cases—I believe there are nine files here, are there not, Mr. Lally?

Mr. Lally: Nine.

Mr. Schei: Now, I bring to your Honor's attention the fact that in administrator's decision, Veterans Administration No. 742 dated April 1, 1947, which will no doubt be mentioned in the briefs—

The Court: Let me say this to you, Mr. Schei: I don't know if there is any real need of offering this in evidence. The Court would take judicial notice of any act, rules and regulations of the administrative body which is called to my attention in the briefs. Anything pertinent on either side, do so.

Mr. Lally: Your Honor, I would like very much to have it a part of the record. It shows the administrative practice of the Veterans Administration.

The Court: I am going to receive it and it may be supplemented by anything you wish to call to my attention.

Mr. Schei: May it be understood, your Honor, that I will [121] have an opportunity to object on the ground it is incompetent, irrelevant and immaterial and on the further ground I have just stated, that they do not present a full picture of the ad-

ministrative practice under the Act. I will make those points in my brief.

The Court: I am going to receive it now for the limited purpose contained in the offer, with the understanding that you can supplement it in any way you see fit by any rules and regulations which in any way affect this.

Mr. Schei: Well, your Honor, I have no access to the records of the Veterans Administration. There are nine cases here. In the Administrator's decision they mention there are fourteen cases. Why we do not have the record of the other five, I do not know. In my interrogatories I asked them who were the fourteen people who were mentioned in this Administrator's decision.

The Court: Mr. Lally would be glad to supply that information for you if he has it, I am sure.

Mr. Lally: It is not available to me at the moment, but I will certainly try to get it for them.

(Photostatic copies of the files of the Veterans Bureau maintained in connection with administration of the Soldiers' and Sailors' Civil Relief Act pertaining to nine soldiers were marked Defendant's Exhibit K.)

The Court: Is that all? [122]

Mr. Lally: No, your Honor; there are a couple of more documents. I just want to be sure I have everything.

These were also documents, your Honor, that we overlooked at the time we introduced the other Veterans' Administration files pertaining to these people. They are properly authenticated copies and

we submit them with the same understanding with Mr. Schei, that he might also have an opportunity to object—

Mr. Schei: Might I also ask, Mr. Lally—

This last matter, your Honor, consists largely, I think, of the final report of the Civil Relief Section of the Insurance Division of the Veterans Administration. I don't have a copy of this report.

Mr. Lally: I don't have an extra copy of it. However, it will be available for your examination if you care to look at it.

The Court: It will be received with the understanding that if you would have any objections after you review it that you will specify your objections in the memorandum.

Mr. Schei: Very well, your Honor.

(The document referred to was marked Defendant's Exhibit L.)

[See pages 305-312.]

Mr. Lally: This is a document also a part of the Veterans Administration's records, the report of the Director—one particular page of the report of the Director of the Veterans [123] Bureau for the fiscal year 1924; it sets forth a document here also that Mr. Schei can object to after he has an opportunity to examine it.

The Court: Very well. The same order on that exhibit as made on the previous one.

(The document referred to was marked Defendant's Exhibit M.)

[See pages 312-313.]

Mr. Lally: There is another document here, your

Honor, from the Veterans Administration. It is a copy of a document containing 300 names, indicating the amount of dividends so far as Paul Plesha is concerned, and we ask that it be received with the same thought in mind——

The Court: The only part that is pertinent is the reference to Paul Plesha?

Mr. Lally: That is correct. It is a photostat of that page, your Honor, and then the other is a General Accounting Office document, and certain checks and certain supporting records identified here as D.O. voucher with a certain number issued in payment thereof, and certain schedules. They also, I believe, pertain to Plesha, and I ask they be admitted for identification with the same thought, your Honor.

The Court: That will be the order.

Mr. Schei: I can see no objection to those at the present time, your Honor, but I have not had the opportunity of examining them before. Might it be understood that I could [124] object if I wished to?

The Court: Yes.

(The documents referred to were marked Defendant's Exhibit N.)

Mr. Lally: We have one other document, your Honor, we would like to submit. An objection might be made to it at the same time.

Mr. Schei: I might point out that that particular one does not refer to any of these cases specifically, although by comparing the numbers it may appear that it does not.

(After examining documents) The same objec-

tion—or I mean, the same possibility of making objection.

The Court: Yes.

(The document referred to was marked Defendant's Exhibit O.)

The Court: Is that all?

Mr. Lally: That is all.

Mr. Schei: One other thing, your Honor: The last time I examined the answers to our interrogatories in the Clerk's office, there weren't attached thereto all of the exhibits which purported to be attached, and I would like it understood that if any of those are missing they will be supplied.

Mr. Lally: I feel sure all copies are attached to the answers. If they are not, we certainly will make them available. [125]

* * * * *

[Endorsed]: Filed November 5, 1953.

PLAINTIFFS' EXHIBIT No. 1

1. First name—middle initial—last name: Paul E. Plesha.
2. Permanent mailing address: 314-26 Street, Sacramento, California.
3. County: Sacramento.
4. Service Serial No.: 20908010.
5. Branch of Service: Army. Enlisted: Yes.
6. Date of birth: June 18, 1920.
7. Insurance No.: N-192-72-54.
8. Claim No.:

254 *P. E. Plesha, J. E. Mabbutt, M. L. Kern*

9. Signature of Veteran or Serviceman: Signed Paul E. Plesha.

I certify that I am the veteran or serviceman whose name is shown in Item 1, and do hereby apply for any special dividend payable on my National Service Life Insurance, to be mailed to the address shown above.

3458 A06

[Return addressed envelope of Veterans Administration, Washington, D. C.]

3458 A06

Paul E. Plesha
314-26 Street
Sacramento 16, California

PLAINTIFFS' EXHIBIT No. 2

1. First name—middle initial—last name: Myron L. Kern.

2. Permanent mailing address: 128 Tapia Drive, San Francisco 27, Calif.

3. County: San Francisco.

4. Service Serial No.: Enlisted ASN 39012233; Officer 0-575188.

5. Branch of Service: USAAF.

6. Date of birth: Sept. 3, 1914.

7. Insurance No.: N-938477.

8. Claim No.: C-6555696.

9. Signature of Veteran or Serviceman: Signed Myron L. Kern.

I certify that I am the veteran or serviceman whose name is shown in Item 1, and do hereby apply for any special dividend payable on my National Service Life Insurance, to be mailed to the address shown above.

3482 A30

[Return addressed envelope of Veterans Administration, Washington, D. C.]

3482 A30

Myron L. Kern

128 Tapia Drive

San Francisco 27, California

PLAINTIFFS' EXHIBIT No. 3

1. First name—middle initial—last name: James E. Mabbutt.

2. Permanent mailing address: 1419 Oak Grove Ave., Burlingame, California.

3. County: San Mateo.

4. Service Serial No.: Enlisted 20900864; Officer D1336085.

5. Branch of Service: Army.

6. Date of birth: August 13th, 1922.

7. Insurance No.: V 1207 - 19 - 52, N 616 - 36 - 32, FN 47 - 26 - 19.

8. Claim No.: C-14511157.

256 *P. E. Plesha, J. E. Mabbutt, M. L. Kern*

9. Signature of Veteran or Serviceman: Signed
James E. Mabbutt.

I certify that I am the veteran or serviceman
whose name is shown in Item 1, and do hereby
apply for any special dividend payable on my Na-
tional Service Life Insurance, to be mailed to the
address shown above.

2239 A30

[Return Addressed Envelope of Veterans
Administration, Washington, D. C.]

2239 A30

James E. Mabbutt
1419 Oak Grove Ave.
Burlingame, California

REFS Ex. 4 **ACKNOWLEDGMENT OF SPECIAL DIVIDEND APPLICATION** **NATIONAL SERVICE LIFE INSURANCE**

DO NOT WRITE TO THE VETERANS ADMINISTRATION CONCERNING YOUR APPLICATION, OR SUBMIT ANOTHER APPLICATION. SUCH ACTION WILL DELAY PAYMENT OF YOUR DIVIDEND.

1. This portion of the form when returned to you with a Dividend Application Number assigned on the reverse side will serve as an acknowledgment. *Keep this card until you receive your dividend check.* Until payment has been made, the Dividend Application Number shown on the reverse side is the only means of referring to your application for dividends. This number has no other significance and should not be used in connection with any other correspondence with the Veterans Administration.

2. Payment of your dividend will be made only in cash. Your check for this dividend will be mailed to the address given in your application. If your mailing address changes before you receive your dividend check, leave a forwarding address with your postmaster. Any change of address which has to be made by the Veterans Administration in connection with this application will cause delay in paying the dividend.

(DO NOT DETACH—Fold top portion back for mailing)

RETURN TO

No. 6326

REFS Ex. 4 No. 4

JAN 23 1953

C. W. Calbreath, Clerk

By [Signature]
 Deputy Clerk

PLACE
ONE
CENT
STAMP
HERE

VETERANS ADMINISTRATION, 9J
 WASHINGTON 25, D. C.

V A FORM 9-430
 JUN 1949

APPLICATION FOR SPECIAL DIVIDEND **NATIONAL SERVICE LIFE INSURANCE**

This application to be used by veteran or serviceman only. This form is not to be used if veteran or serviceman is deceased or incompetent. See SPECIAL INSTRUCTIONS on reverse side.

DO NOT WRITE TO THE VETERANS ADMINISTRATION CONCERNING YOUR APPLICATION, OR SUBMIT ANOTHER APPLICATION. SUCH ACTION WILL DELAY PAYMENT OF YOUR DIVIDEND.

Read all instructions carefully before completing this form. The information requested is required to identify your National Service Life Insurance account(s) and to mail a check to you for the dividends earned. This dividend is payable on National Service Life Insurance only. This insurance was not issued before October 8, 1940. The dividend is not payable on insurance issued after December 31, 1947, or insurance which was in force less than 3 months.

● **NAME AND SIGNATURE OF VETERAN.**—Under item 9 sign your name in longhand (*do not print or type*) to correspond with your name as given in item 1. Use identical and exact name under which you served in the Armed Forces, unless the Veterans Administration has been furnished change of name.

● **PERMANENT MAILING ADDRESS.**—Furnish an address where mail will reach you for at least the next 6 months. If your address changes, supply your postmaster with a forwarding address. Any change of address which has to be made by the Veterans Administration in connection with this application will cause delay in paying the dividend.

● **BRANCH OF SERVICE.**—Enter the specific branch of service in which you served on and after October 8, 1940, such as Army, Navy, Marine Corps, Coast Guard, Philippine Army, U. S. Public Health Service, or Coast and Geodetic Survey.

● **INSURANCE NUMBERS.**—If known, list all your National Service Life Insurance policy numbers. If unknown, leave item 7 blank. Please *do not* write the Veterans Administration for unknown numbers.

DO NOT ENCLOSE THIS FORM IN AN ENVELOPE
 (Detach on this perforated line and retain the portion above)

1. FIRST NAME—MIDDLE INITIAL—LAST NAME (Type or print)

2. PERMANENT MAILING ADDRESS (Number and street or rural route, city, zone number, and State)

3. COUNTY

4. SERVICE SERIAL NO(S) (Give all numbers assigned)

ENLISTED

OFFICER

OTHER

5. BRANCH OF SERVICE

6. DATE OF BIRTH (Month — Day — Year)

7. INSURANCE NO(S). (Include prefix N, V, or I)

8. CLAIM NO. (If any)

I CERTIFY THAT I AM THE VETERAN OR SERVICEMAN WHOSE NAME IS SHOWN IN ITEM 1, AND DO HEREBY APPLY FOR ANY SPECIAL DIVIDEND PAYABLE ON MY NATIONAL SERVICE LIFE INSURANCE, TO BE MAILED TO THE ADDRESS SHOWN ABOVE

changes, supply your postmaster with a forwarding address. Any change of address which has to be made by the Veterans Administration for unknown numbers.

policy numbers. If unknown, leave item 7 blank. Please *do not* write the Veterans Administration for unknown numbers.

DO NOT ENCLOSE THIS FORM IN AN ENVELOPE
 (Detach on this perforated line and retain the portion above)

1. FIRST NAME—MIDDLE INITIAL—LAST NAME (Type or print)

2. PERMANENT MAILING ADDRESS (Number and street or rural route, city, zone number, and State)

3. COUNTY

4. SERVICE SERIAL NO(S) (Give all numbers assigned)

ENLISTED

OFFICER

OTHER

5. BRANCH OF SERVICE

6. DATE OF BIRTH (Month — Day — Year)

7. INSURANCE NO(S). (Include prefix N, V, or I)

8. CLAIM NO. (If any)

I CERTIFY THAT I AM THE VETERAN OR SERVICEMAN WHOSE NAME IS SHOWN IN ITEM 1, AND DO HEREBY APPLY FOR ANY SPECIAL DIVIDEND PAYABLE ON MY NATIONAL SERVICE LIFE INSURANCE, TO BE MAILED TO THE ADDRESS SHOWN ABOVE

9. SIGNATURE OF VETERAN OR SERVICEMAN (Do not print)

(Fold this side in. Place stamp on reverse side and mail without fastening)

VETERANS ADMINISTRATION
 WASHINGTON 25, D. C.

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID
 PAYMENT OF POSTAGE, \$300
 (GPO)

DIVIDEND APPLICATION NO.
 (To be furnished by V.A.)

Print your name
 and address on this
 Acknowledgment
 Card

(Name)

(Number and street)

(City)

(Zone number)

(State)

SPECIAL INSTRUCTIONS

IF VETERAN IS DECEASED this form will not be used. Beneficiaries currently receiving insurance payments or who have been paid completely will receive dividends without application. Other persons entitled to this dividend, accruing to deceased veterans, will be furnished forms direct by the Veterans Administration without request.

IF VETERAN OR SERVICEMAN IS INCOMPETENT.—The guardian or fiduciary should apply by letter, addressed to Special Dividend Applications Unit, Veterans Administration, Washington 25, D. C., including the veteran's or serviceman's name, date of birth, serial number(s), claim number, and insurance number(s), and the applicant's name, address, and official capacity in relation to the veteran or serviceman. If proof of official capacity has been submitted to a Veterans Administration Office, please supply the location of that office.

PENALTY.—The law provides that whoever makes any statement of a material fact, knowing it to be false, shall be punishable by a fine of not more than \$1,000 or by imprisonment for not more than a year, or both.

STATEMENT OF NATIONAL SERVICE LIFE INSURANCE SPECIAL DIVIDEND ACCOUNT

REF ID: A65555

NAME		ACCOUNT NUMBER	GROSS DIVIDEND	DEDUCTIONS	
P E P L E S H A		N 1927254 C 6546188	23100		22105
\$ 9.95	N 1927254		23100		22105
↑ AMOUNT OF YOUR CHECK (TOTAL DIVIDEND FOR ALL POLICIES LESS DEDUCTIONS IF ANY).	↑ THIS IS YOUR INSURANCE FILE NUMBER. PLEASE USE THIS NUMBER IN ANY COR- RESPONDENCE ABOUT YOUR DIVIDEND PAYMENT.	↑ ACCOUNT NUMBER RELATING TO AMOUNT SHOWN ON SAME LINE.	↑ DIVIDEND FOR EACH POLICY AND TOTAL DIVIDEND BEFORE DE- DUCTIONS.	↑ PREMIUM SHORTAGE OR LIEN ON YOUR INSURANCE AND TOTAL.	↑ UNAUTHORIZED PAYMENTS MADE TO YOU IN CON- NECTION WITH VETERANS BENEFITS AND TOTAL.

VA FORM 9-1698 OCT. 1949

SEE OTHER SIDE FOR FURTHER INFORMATION

IMPORTANT MESSAGE - READ CAREFULLY

• **AMOUNT OF YOUR CHECK** - This amount is the total of dividends on all your policies, less deductions (if any) of amounts owed by you for insurance premium shortage or lien or unauthorized payment of a veterans benefit.

• **INSURANCE FILE NUMBER** - Please use this number in any correspondence about your dividend payment to assure a prompt reply to your letter.

• **ACCOUNT NUMBER** - The account numbers with the letters N, V or H are your insurance policy numbers. An account number with the letter C is your Veterans Administration claim number.

• **DIVIDEND FOR EACH POLICY** - The individual amounts are the dividends for each of your policies, with the total shown as the last amount. On the same line with each individual amount is shown the number of the policy on which the amount is payable. If the figures 0.00 are shown beside a policy number, the policy is not eligible for a Special Dividend. If you have reduced the face amount of a policy, two or more amounts of dividend are shown for that policy - one amount for the dividend at each face amount of insurance. The number of that policy will appear on two or more lines, opposite the amount of dividend for each face amount of insurance. Please address any questions about these amounts to the Veterans Administration office which maintains your *insurance records* giving the insurance file number shown on the face of this statement.

The code number for this office appears to the left of the word "Pay" on your check and the address of this office is shown on the enclosed slip, opposite the code number.

• **INSURANCE PREMIUM SHORTAGE OR LIEN** - This amount was withheld from your dividend to pay a premium shortage or liens on your insurance. On the same line with the amount is shown the number of the policy on which the amount is owed. Please address any questions to the Veterans Administration office which maintains your *insurance records*, as indicated on the enclosed slip, giving the insurance file number shown on the face of this statement.

• **UNAUTHORIZED PAYMENT OF VETERANS BENEFITS** - This amount was withheld from your dividend to repay the amounts of a payment (or value of a service) made to you in connection with veterans benefits in excess of your entitlement. On the same line with the amount is shown your Veterans Administration claim number (if any), under which the unauthorized payment was made. If you have already paid all or a part of this amount, a refund will be made of the balance due by the Veterans Administration Regional Office which maintains your *claim records*. Please address any questions regarding deductions on account of unauthorized payment of veterans benefits to the Veterans Administration office which maintains your *claim records*, giving your claim number, as shown beside the amount of deduction, to assure prompt reply to your letter.

**PLEASE GIVE YOUR INSURANCE NUMBERS AND SERVICE SERIAL
NUMBERS IN ANY CORRESPONDENCE ABOUT YOUR DIVIDEND**

PLAINTIFFS' EXHIBIT No. 6

[Veterans Administration Letterhead]

In reply refer to: FBE

October 24, 1941

California-Western States Life Insurance Co.
California State Life Building
10th and J Streets, Sacramento, California

Gentlemen:

It is requested that the following instructions be observed in the handling of all matters relating to the Monthly Difference Report (Insurance Form 382) described in Section 406 of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940.

1. Within the first fifteen (15) days of each month the insurer will list in a report, using form identified as "Monthly List of Applications" (Insurance Form 382a), the policies, by name of insured, number and amount, on which applications for benefits were received during the previous calendar month. A supply of the Form 382a is enclosed.

2. Within the first fifteen (15) days of each month the insurer will list in a report using the form identified as "Monthly Difference Report" (Insurance Form 382), hereinafter referred to as "Report", the policies on which the premiums remained unpaid on the last day of the preceding calendar month if said last day was at least thirty-one days after the due date of the premium and on which the Home Office has not received a notice of rejection for protection under the provisions of

Plaintiffs' Exhibit No. 6—(Continued)

Article IV. The Report will be identified as the report for the month preceding the month in which it is verified and submitted. The premium on an annual basis will be charged against the Government in column 4 of the Report.

3. It will be the responsibility of the insurer to list policies and enter the amount of premiums due thereon when properly chargeable. When because of some undue delay in the receipt of an application by the insurer or for any other reason the premium on a policy is found to have been in default more than thirty-one days on the last day of a month for which a report has been previously submitted, the policy will be listed and charged for on the next Report and the practice heretofore in effect, of submitting supplemental reports for previous months, is discontinued.

4. If a premium is charged against the Government in column 4, on which there is also a credit due the Government that became available during the Report month (such as a dividend or cash payment), the amount of the credit will be entered in column 5 and any interest received by the insurer will be entered in column 6.

5. After a premium on a policy has been charged against the Government in column 4 and thereafter a dividend, cash payment, or other credit is to be entered in behalf of the Government, the amount thereof will be entered in column 5 (interest, if any, in column 6) of the Report for the month in which the credit first became available.

Plaintiffs' Exhibit No. 6—(Continued)

6. The Veterans Administration hereby approves the disposition of any dividend which is available as paid-up insurance or is to be applied to the purchase of paid-up additional insurance, or placed on deposit, and no mention thereof will be made in the Report. However, this office should be informed by a copy of the dividend notice, or by a statement, or otherwise as to each policy on which a dividend is so applied.

7. If the protection of a policy under the Act is terminated by death, surrender, withdrawal, or otherwise and not by the provision of Section 410, the insurer will make settlement with the beneficiary or other person entitled to the proceeds thereof in accordance with its usual procedure in the handling of such matters. The settlement will include interest on the amount of the premium on an annual basis for the period from the due date of each premium to the date of termination. A report of settlement will be made as to each policy and will show the amount and date of each payment received by the insurer for the period the policy was protected by the law, the amount representing unearned portion of the annual premium, the rate and amount of interest charged or allowed, and all other essential information.

When termination is by death or surrender:

(a) If the insurer deducted the amount of an annual premium, with interest from the due date to date of termination at the rate fixed for policy loans (R-3307(d) of the regulation), then the in-

Plaintiffs' Exhibit No. 6—(Continued)

surer will enter the amounts so deducted in columns 5 and 6 of the Report for the month in which the action is taken.

(b) If the insurer deducted the amount of premium on other than an annual basis, with interest on the amount from the due date to date of termination at the rate fixed for policy loans (R-3307(d) of the regulation), then the insurer will enter the amounts so deducted in columns 5 and 6 of the Report for the month in which the action is taken. Also, there will be entered in column 5 as a separate item, the difference between the amount so deducted and the annual premium.

8. Amounts due the United States from the cash surrender value of policies terminated under Section 410 of the Act will not be included as items in the Monthly Difference Report. A separate statement for each policy in all such cases will be submitted to the Veterans Administration at the time of termination, setting forth all debits and credits, the rate of interest charged or allowed, and all other essential information.

9. In the Report under column 7 are to be entered the premiums on policies charged against the Government in column 4 of a former Report because the policy has now been rejected by this office. It is the intention of this office to take final action (approve or reject) on each policy listed in a Report before approving the audit thereof and prior to issuing a certificate (Form 388) to insurer covering the amount of the indebtedness due by the

Plaintiffs' Exhibit No. 6—(Continued)

Government as shown thereon. However, there may be errors or other action to be corrected that would bring about the rejection of a policy that had previously been approved for protection under the law. Under such circumstances it is necessary to enter the amount of premium on the policy under column 7 of the Report for the month in which the action is taken.

10. The credits entered in columns 5, 6 and 7 of a Report will be summed up in column 8. The total of column 8 will be deducted from the total of column 4, and the difference will be entered in column 9. The sum denominated as the monthly difference and entered in column 9 will upon approval after audit by the Veterans Administration, be the amount of the certificate for that month. All certificates hereafter will be issued effective the first day of the month following the month of the report as defined in paragraph 2 hereof, and all certificates heretofore issued will be reissued accordingly.

11. There will be Reports in which the credits as shown by the total of column 8 are greater than the debits as shown by the total of column 4. In that event there will be a minus difference in column 9, the same being the amount due the Government and necessitating the recall of a previously issued certificate for reduction in amount to effect an adjustment in the balance then due the insurer. The new certificate will be issued by this office for an amount sufficient to cover the reduced indebtedness plus simple interest at the rate of 3% on the minus

Plaintiffs' Exhibit No. 6—(Continued)

difference as shown in column 9 from the interest date of the recalled certificate to what would otherwise be the interest date of the certificate for the month of the Report. The amount of such interest will be discounted at the rate of 3% to the interest date of the new certificate, and will be entered by the Veterans Administration in column 9 of the Report. The new certificate will be issued under a new number and will bear interest from the interest date of the recalled certificate. The amount of the new certificate may be expressed by the formula $A-B(1+.03n/12)-1$ where A is the amount of the previously issued certificate, B the amount of the minus difference, and n the number of months elapsed between the two reports.

12. The insurer, in preparing a Monthly Difference Report, may group the policies by classes—as ordinary life, intermediate, and industrial, and will list alphabetically the names of insureds under each class. If a report consists of two or more sheets of Form 382, a recapitulation may be made on the last sheet. It is not necessary that the total be brought forward from preceding sheets or that each sheet of a report be signed. The statement on the reverse side of Form 382, entitled "Verified by Insurer", on the last sheet of the ribbon copy and one carbon copy of the report may be executed if proper reference is made to the number of sheets of Form 382 that constitute the report.

The foregoing supersedes any and all instructions in conflict herewith which have been heretofore is-

Plaintiffs' Exhibit No. 6—(Continued)

sued to you by correspondence or otherwise from this office on the subject. Beginning with the month of November, please submit a list of policies as set out in paragraph 1 hereof. Kindly submit your Monthly Difference Report (Form 382) for the month ending October 31, 1941 within the first fifteen (15) days of November, in accordance with the procedure herein outlined for your information and guidance.

Your Monthly Difference Reports (Form 382) for the months prior to November will be examined and audited by this office as promptly as possible. The certificates (if any) previously issued should be returned and new certificates conforming with the procedure outlined in paragraph 10 will be issued.

Your usual generous cooperation in the handling of this task will be appreciated.

Very truly yours,

/s/ HAROLD W. BREINING,
Assistant Administrator

Policy #419814 - Paul Plesha - Protected off 3-6-41 - Released from service 10-20-45

Refs. Ex. 7 for Id.

Premium			Interest			Total			Premium			Interest			Total		
Due date	Amount	6% Compound in advance	5% Simple	Amount	6% Compound in advance	Amount			Amount			Amount	3% Simple				
3/6/41	4513	288	4801	4513	288	4801			4513			4513	5 yrs				
12/6/41	490	07	4304														
3/6/42	4513	563	9380	4513	595	9909			4513			4513	4 yrs				
12/6/42	503	08	8869														
3/6/43	4513	854	14236	4513	921	15343			4513			4513	3 yrs				
12/6/43	488	07	13741														
3/6/44	4513	1165	19419	4513	1267	21123			4513			4513	2 yrs				
12/6/44	490	07	18922														
3/6/45	4513	1496	24931	4513	1636	27272			4513			4513	1 yr				
12/6/45	495	08	24428														
3/6/46	4513	1847	30788	2821	1172	31265			2821			2821	7 mos. 15 days				
12/6/46	498	08	30282														
3/6/47	2821	1290	34393														
10/20/47 incl.																	
Totals	26935	7458	34393	25386	5879	31265			25386								
	Less Cash Value		8288	Less Cash Value		6575			2031			Interest to 3/6/46					
	Pl by Gov't		26105	Dividends & Int		2729			474			✓					
				Net due		21961			27891								
									6575			Less Cash Value					
									2729			Less Dividends & Int					
									18587								
												Total calculated to 1/25/49					
									Premiums			25386					
									Interest to 3/6/48			3554					
									✓			675					
												29615					
									Less Cash Value & Div			9304					
												20311					

Red figures are dividends

Circled items are dividend and unearned interest credits

Policy #47864v. Myron Kera - Protection eff 12-11-41.

Released from service 2-8-46

REFS. Ex 8 for Id

Premium			Interest		Total		Premium			Interest		Total		Premium			Interest		Total	
Date	Amount	6% Compound in advance	SSA	Int	Amount	6% Compound in advance	Amount	Amount	6% Compound in advance	Amount	SS Single	Amount	6% Compound in advance	Amount	Amount	6% Compound in advance	Amount	SS Single	Amount	
6/13/42	976	623	10385		976	623	10385	976	623	10385	4yrs	976	623	10385	976	623	10385	4yrs		
6/13/43	9858	129	21535		9858	129	21535	9858	129	21535	3yrs	9858	129	21535	9858	129	21535	3yrs		
6/13/44	9858	2004	33397		9858	2004	33397	9858	2004	33397	2yrs	9858	2004	33397	9858	2004	33397	2yrs		
6/13/45	9858	2761	46016		9858	2761	46016	9858	2761	46016	1yr	9858	2761	46016	9858	2761	46016	1yr		
6/13/46	9858	3566	59440		6189	2943	54248	6189	2943	54248	Two-16 days	6189	2943	54248	6189	2943	54248	Two-16 days		
6/13/47	6189	2569	68198																	
2/8/48 incl																				
Total	55383	12815	68198		45525	8723	54248	45525	8723	54248		45525	8723	54248	45525	8723	54248			
	Less Cash Value		41762		Less Cash Value		33285		Less Cash Value			2945	Interest to 6/13/46						6/13/46	
	Pay by Court		26436		Net due		20963					857	✓ 2/8/47 incl						2/8/47 incl	
												49327								
												33285	Less Cash Value							
												16042								

Policy # 29,773 - Air - 100% eff 12-21-41 - Released July 2-8-46

Form Ex. 9 for Id.

Premium	Interest	Total	Premium	Interest	Total	Premium	Interest
Due date	Amount	in advance	Amount	in advance	Amount	Amount	in advance
12/21/41	6006	383	6389	6006	383	6389	5yrs
12/21/42	6006	791	13186	6006	791	13186	4yrs
12/21/43	6006	1225	20417	6006	1225	20417	3yrs
12/21/44	6006	1687	28110	6006	1687	28110	2yrs
12/21/45	6006	2178	36294	6006	2178	36294	1yr
12/21/46	6006	2700	45000	801	299	37394	1mo-18days
12/21/47	801	369	4670				
2/8/48 incl.							
Totals	36827	9333	46170	30831	6563	37394	30831
	Less Cash Value	39400		Less Cash Value	33573		2703 Interest to 12/21/46
	Pay Govt	6770		Net due	3821		123 - 2/8/49 incl
							33657
							33573 Less Cash Value
							84
							Total calculated to 1/5/49
							Premiums 30831
							Interest to 1/5/48 4553
							1/5/49 87
							35471
							Less Cash Value 33573
							1898

PRRS. 10 for Id. Withdrawn off 2-22-47 incl

Policy # 42058 - James Mabbutt - Protection off 3-12-41 - Release from service 12-25-45

Premium	Interest	Total	Premium	Interest	Total	Premium	Interest
Due date	Amount	6% Compd in advance	SSP 9 days	Amount	6% Compd in advance	Accum	Amount
3/1/41	3635	232	2867	3635	232	3867	3635
3/1/42	3635	479	7981	3635	479	7981	3635
3/1/43	3635	741	12357	3635	741	12357	3635
3/1/44	3635	1021	17013	3635	1021	17013	3635
3/1/45	3635	1318	21966	3635	1318	21966	3635
3/1/46	3433	1526	26925	2868	1234	26068	2868
2/22/47 incl				Interest incl			Interest incl
Totals	21608	5317	26925	21043	5025	26068	21043
	Less Cash Value		6350	Less Cash Value		6070	1635
	Pay 6007		20575	Net due		19998	498

Interest to 3/1/46
1635
498
23176
6070 Less Cash Value
17106

Total calculated to 1/25/49

Premiums 21043
Interest to 3/1/48 2898
1/25/49 549
24490
Less Cash Value 6070
18420

Policy # 470036 - Glenn Clover - Protection off 3-28-41

REF. Ex. 11
Still protected - Assume term 3-28-53

Due date	Premium	Interest	Total	Due date	Premium	Interest	Total
	Amount	6% Compound in advance	SSPA		Amount	3% Simple	
3/28/41	4775	305	5080	3/28/41	4775	12 yrs	
12/28/41	(513)	(08)	4559				
3/28/42	4775	596	9930	3/28/42	4775	11 yrs	
12/28/42	(523)	(08)	9399				
3/28/43	4775	905	15079	3/28/43	4775	10 yrs	
12/28/43	(508)	(08)	14563				
3/28/44	4775	1234	20572	3/28/44	4775	9 yrs	
12/28/44	(510)	(08)	20054				
3/28/45	4775	1585	26414	3/28/45	4775	8 yrs	
12/28/45	(518)	(08)	25888				
3/28/46	4775	1957	32620	3/28/46	4775	7 yrs	
12/28/46	(523)	(08)	32089				
3/28/47	4775	2353	39217	3/28/47	4775	6 yrs	
12/28/47	(528)	(08)	38681				
3/28/48	4775	2774	46230	3/28/48	4775	5 yrs	
12/28/48	(535)	(08)	45687				
3/28/49	4775	3221	53683	3/28/49	4775	4 yrs	
12/28/49	(555)	(08)	53120				
3/28/50	4775	3695	61590	3/28/50	4775	3 yrs	
12/28/50	(580)	(09)	61001				
3/28/51	4775	4198	69974	3/28/51	4775	2 yrs	
12/28/51	(610)	(09)	69355				
3/28/52	4775	4732	78862	3/28/52	4775	1 yr	
12/28/52	(635)	(10)	78197				
Totals	50742	27455	78197		57300		
	Less Cash Value		23550		11175	Interest to 3/28/53	
			54647		68475	Less Cash Value	
					23550	Less Dividends & Int	
					36930		

Circled items are dividends and unexpended interest credits.
Red figures are dividends.

40358 McDaniel Protection eff 3-2-41- Death 2/1/45

Pres. Ex. 12 FOR IDENT

Premium		Interest	Total	Premium		Interest					
Due date	Amount	6% Compounded in advance	SSPA loan	Amount	3% Simple						
3/1/41	4433	283	4716	4433	4 yrs						
3/1/42	4433	584	9733	4433	3 yrs						
3/1/43	4433	904	15070	4433	2 yrs						
3/1/44	4433	1245	20748	4433	1 yr						
3/1/45	3325	1333	25076	3325	9 mos.						
12/1/45											
Totals	21057	4019	25076	21057							
Refund interest 7/1/45 7/1/45			1181	1330	Interest to 3/1/45						
			23895	474	12/1/45						
				22861							

MONTHLY DIFFERENCE REPORT

REQUIRED BY THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.

This Report must be verified by the President or Secretary of the Insurance Company or Association and be forwarded in triplicate to the Veterans Administration, Insurance Service, Washington, D. C.

Company or Association

CALIFORNIA WE TERN STATES LIFE INSURANCE COMPANY

Address

SACRA MTO, CALIFORNIA

Report for Month ending

JULY 31, 1942

(Do not write on this line.)

NAME OF INSURED.	Number of Policy.	Face Value of Policy.	Amount of premiums in default unpaid over 31 days not previously reported.	Amount paid during calendar month just ending on premiums previously reported in default, including premiums deducted from the proceeds of policies terminated by death.	Interest collected on delinquent premiums paid and interest on premiums deducted from the proceeds of policies terminated by death.	Premiums previously reported in default now reported by Veterans Administration.	Sum of (5) to (7), inclusive.	Difference between (4) and (8).
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
August, Anthony J.	419532	\$2,500	\$44.33					\$44.33
Balleit, Robert A.	503172	1,000	29.77					29.77
ely, Harold C.	352527	2,109		\$5.00			\$5.00	(3.00)
Kates, Karl L.	420249	2,500	\$6.85					\$6.85
Fish, George H.	420338	2,500	\$5.13					\$5.13
Harrison, William G.	379962	1,000	19.58					19.58
Johnstone, Claude R.	419624	2,500	37.05					37.05
Kelley Edwin R.	429004	2,500	74.25					74.25
Kern, Byron	428642	3,000	98.58					98.58
Long, James A.	427138	3,000	45.07					45.07
McFie, Mark W.	406940	2,000	30.92					30.92
Reaves, Auburn W.	420446	2,500	\$6.77					\$6.77
Smith, A. Ray	404344	1,000	31.16					31.16
Smith, Victor J.	403640	3,000	47.99	9.88			9.88	48.11
Toronto, Frank	420430	2,000	102.34					102.34
Turner, James O.	403424	5,000	73.53	19.12			19.12	92.65
Varrink, Stephen D.	422966	3,500	78.68					78.68
Vineberg, Edwin L.	420276	2,500	\$4.33					\$4.33
Woodward, Kenneth J.	350344	1,000	6.78					6.78
				no rate from 6/26/42 to 10/1/42				
Schneider, Earl N.	421258	2500	19.26	Two year protection under extended act				19.26
			807.81					

APPROVED FOR \$509.81 CLERK #282481281

ISSUED 4/3/43 REGISTRAR

No cash received premium on new home

APPROVED FOR \$807.81 CERT. #282481281

ISSUED 6/13/43 REGISTRAR

No with
Nelson
Sullivan
M. H. H.

Verification By Insurer:

The above has been fully verified and found to be a correct statement of the account.

Signed at Sacramento, California August 18 1942 in the name of the Insurer.

By

(Name and Official Capacity)

R. E. Orsmond, Secretary

MONTHLY DIFFERENCE REPORT

REQUIRED BY THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.

This Report must be verified by the President or Secretary of the Insurance Company or Association and be forwarded in triplicate to the Veterans Administration, Insurance Service, Washington, D. C.

Company or Association

CALIFORNIA WE TRUST STATES LIFE INSURANCE COMPANY

Address

SACRA BUTO, CALIFORNIA

Report for Month ending JULY 31, 1942

(Do not write on this line.)

NAME OF INSURED.	Number of Policy.	Face Value of Policy.	Amount of premiums in default unpaid over 31 days not previously reported.	Amount paid during calendar month just ending on premium previously reported in default, including premiums deducted from the proceeds of policies terminated by death.	Interest collected on deducted premiums paid and interest on premiums deducted from the proceeds of policies terminated by death.	Premiums previously reported in default now reported by Veterans Administration.	Sum of (5) to (7), inclusive.	Difference between (4) and (8).	Space for approval or rejection by the Bureau.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
August, Anthony J.	419532	\$2,500	\$44.33					\$44.33	
Balleit, Robert A.	503172	1,000	29.77					29.77	
aly, Harold C.	382327	2,189		\$5.00			\$5.00	29.77	
Kates, Earl L.	420249	2,500	46.85					46.85	
Fish, George W.	420338	2,500	45.13					45.13	
Harrison, William G.	379564	1,000	19.58					19.58	
Johnstone, Claude W.	419628	2,500	37.05					37.05	
Kelley Edwin W.	429004	2,500	74.25					74.25	
Kern, Byron	428642	3,000	98.58					98.58	
Long, James A.	427138	3,000	45.07					45.07	
McRie, Mark W.	406940	2,000	30.92					30.92	
Reaves, Auburn W.	420446	2,500	48.73					48.73	
Smith, A. Ray	395344	1,000	31.16					31.16	
Smith, Victor J.	402640	3,000	77.99	9.88			9.88	78.11	not in default
Toronto, Frank	420430	2,000	102.34					102.34	
Turner, James G.	403424	5,000	73.55	19.12			19.12	74.67	not in default
Varring, Stephen D.	422966	3,500	78.68					78.68	
Vineberg, Edwin L.	420276	2,500	44.33					44.33	
Woodward, Kenneth J.	350334	1,000	6.78					6.78	
				re-rate from 6/26/42 to 10/1/42					
Schneider, Earl M.	421258	2500	19.26	Two year protection under amended act				19.26	
								807.81	51

APPROVED FOR \$807.81 CERT. #2824/812.81

ISSUED 4/3/43 REGISTRAR

No self
renewal
premiums on
new loans

Verification By Insurer:

The above has been fully verified and found to be a correct statement of the account.

Signed at Sacramento, California August 12 1942 in the name of the Insurer.

By

(Name and Official Capacity)

L. I. Orsmond, Secretary

PLAINTIFFS' EXHIBIT No. 14

California Western States Life Insurance Company
Home Office, Sacramento

Agrees to Pay to

Beneficiary—Frances Plesha and Thomas Plesha,
Mother and Father, respectively, of the insured,
share and share alike, or to the survivor of them,

Face Amount—The Sum of Twenty-five Hundred
Dollars upon receipt at its Home Office of this
policy duly discharged together with due proofs of
the death, while this policy is in force, of

The Insured—Paul E. Plesha.

Annual Life Insurance Premium—An Annual
Premium of Fifty-seven and 63/100 Dollars is pay-
able on each Sixth day of December commencing
on the date of issue hereof, during the continuance
of this policy, subject to the provisions hereof per-
taining to the payment of premiums.

This policy is subject to the printed provisions of
the following pages hereof which are hereby made
a part of this contract.

In witness whereof, California-Western States
Life Insurance Company has executed this policy
at Sacramento, California, this Sixth day of De-
cember, 1940, which is the date of issue of this
policy.

[Seal] O. J. LACY, President

/s/ B. V. GRISWOLD, Secretary

Countersigned by: Signed A. G. Káne.

Plaintiffs' Exhibit No. 14—(Continued)

Policy No. 419814

Age 20

Ordinary Life (E85) Special Class. Premiums payable until Age 85 unless previously paid up by dividends. Annual Dividends.

* * * * *

How Premiums Are Payable: The consideration for this contract is the application herefor, which is made a part hereof, the payment on or before the date this policy shall take effect as provided by the application herefor of the annual premium stated on the first page hereof, as the premium for term insurance for one year from the date of issue hereof and for such reserve as may be required by law, and the further payment of a like amount on each anniversary of the said date of issue for the period stated on the first page hereof. Possession of the policy without payment of such first year's premium shall be considered as possession for inspection only. The designation herein of the amount of the premium and the recital as to the consideration of this policy shall not be construed as an acknowledgment of the payment or receipt of premium. All premiums hereon are payable either at the Home Office of the Company or to an authorized agent, on the delivery of a receipt signed by the President or Secretary of the Company, and countersigned by said agent. If any premium hereon shall not be paid on or before the date when due, the liability of the Company hereunder shall cease, except as expressly provided otherwise herein. Notice of every pre-

Plaintiffs' Exhibit No. 14—(Continued)

mium that may become due or payable hereunder is given and accepted by the delivery and acceptance of this policy, and any further notice is expressly waived by the insured.

* * * * *

Grace for Payment of Premiums: A grace period of one month, not less than thirty days (without interest) will be allowed in payment of all premiums after the first, during which time the policy shall remain in force. In the event of the death of the insured within said grace period, the unpaid premium will be deducted from the amount payable hereunder.

When Policy Will Lapse: If any premium be not paid by the end of the grace period, this policy shall lapse.

How Policy May Be Reinstated After Lapse: In event of default in payment of any premium on this policy, the insured shall have the right, at any time within five years after such default, to apply for reinstatement thereof. Application for reinstatement must be made in writing, accompanied by evidence of insurability satisfactory to the Company, together with payment of arrears of premiums and any other indebtedness, with compound interest thereon from date of default at a rate not exceeding six per centum per annum; provided, however, that the policy shall not be considered as reinstated unless and until the application therefor shall have been approved by the Company at its Home Office, such reinstatement to be effective only

Plaintiffs' Exhibit No. 14—(Continued)
from and after the day on which the application
for reinstatement is approved.

* * * * *

PLAINTIFFS' EXHIBIT No. 15

California-Western States Life Insurance Company
Sacramento, California

Number 420558	Face Amount \$2,500.00
Age 18	Annual Premium \$48.85

Will Pay Twenty-five Hundred Dollars to Hazel H. Mabbutt, Mother of the insured, if living, otherwise to Robert H. Mabbutt, Brother of the insured, if living, otherwise to Una Stanford, Aunt of the insured, subject to deferred settlement endorsement attachment hereto, beneficiary, (with the right to change such beneficiary reserved to the insured, subject to the provisions herein contained regarding change of beneficiary) immediately upon receipt of due proofs of the death of James E. Mabbutt, the insured, while this policy is in force.

Guaranteed Options of Settlement at Age 65

If all premiums becoming due on this policy have been paid as provided herein, and if there shall be no indebtedness hereon, the insured, on the policy anniversary at which his age at nearest birthday is sixty-five years, may surrender this policy for any one of the following settlement options:

1. A policy of paid-up life insurance of \$2,068.00;
- or
2. A cash payment of \$1,435.00; or

Plaintiffs' Exhibit No. 15—(Continued)

3. A straight life annuity of \$10.30 per month; or
4. A cash refund annuity of \$7.95 per month.

Under either annuity the first payment will be made on the policy anniversary on which the option becomes available, and subsequent payments monthly thereafter until the death of the insured.

Under Option 4 (cash refund annuity) the Company guarantees to pay an amount at least equal to the cash payment referred to in Option 2 above and, if the insured should die before having received a sum equal thereto, the Company, upon receipt of due proofs of such death, will pay to the beneficiary in one sum an amount sufficient to make the total of payments equal such cash payment.

* * * * *

Premiums

The consideration for this contract is the application herefor, which is made a part hereof, the payment on or before the date this policy shall take effect as provided by the application herefor of Forty-eight and 85/100 Dollars (\$48.85), as the premium for term insurance for one year from the date of issue hereof and for such reserve as may be required by law, and the further payment of a like amount on each anniversary of the said date of issue during the continuance of the policy. Possession of the policy without payment of such first year's premium shall be considered as possession for inspection only. The designation herein of the amount of the premium and the recital as to the consideration of this policy shall not be construed

Plaintiffs' Exhibit No. 15—(Continued)

as an acknowledgment of the payment or receipt of premium: All premiums hereon are payable either at the Home Office of the Company or to an authorized agent, on the delivery of a receipt signed by the President or Secretary of the Company, and countersigned by said agent. If any premium hereon shall not be paid on or before the date when due, the liability of the Company hereunder shall cease, except as expressly provided otherwise herein. Notice of every premium that may become due or payable hereunder is given and accepted by the delivery and acceptance of this policy, and any further notice is expressly waived by the insured.

All of the premiums and values in this policy are based on the assumption that premiums are payable annually as provided above. However, after the policy shall have been in force one year, the insured shall have the privilege, on written request on any anniversary of the date of issue hereof, of paying the premiums hereon semi-annually, quarterly or monthly. Semi-annual premiums shall be fifty-one per centum, quarterly premiums twenty-six per centum and monthly premiums eight and eighty-three hundredths per centum of the annual premium payable hereunder, provided that no individual premium payment shall be of an amount less than five dollars. In the event of death of the insured all semi-annual, quarterly or monthly premiums necessary to complete payment of premiums to the end of the policy year in which the said death occurs

Plaintiffs' Exhibit No. 15—(Continued)

shall be deducted from the amount payable hereunder.

* * * * *

PLAINTIFFS' EXHIBIT No. 16

California-Western States Life Insurance Company
Sacramento, California

Number 395773

Face Amount \$2,000.00

Age 24

Annual Premium \$61.12

Will Pay Two Thousand Dollars to Myron Kern, the insured hereunder, if living on the Twenty-first day of December, 1974; or to Ellen L. Kern, Stepmother of the insured, if living, otherwise to Lenore Kern and Wilfred Kern, Sister and Brother, respectively, of the insured, share and share alike, or to the survivor of them, beneficiary, (with the right to change such beneficiary reserved to the insured, subject to the provisions herein contained regarding change of beneficiary) immediately upon receipt of due proofs of the death of the said insured prior to maturity date of this policy and while the policy is in force.

Guaranteed Options of Settlement at Maturity

If all premiums becoming due on this policy have been paid as provided herein, the insured, on the maturity date hereof, shall have the choice of one of the following options:

1. A cash payment of \$2,000.00; or
2. A life annuity, payable monthly, of \$13.50, the

Plaintiffs' Exhibit No. 16—(Continued)

first payment to be made on the maturity date of the policy and succeeding payments monthly thereafter until the death of the insured; or

3. A life annuity, payable monthly, of \$10.62, the first payment to be made on the maturity date of the policy and succeeding payments monthly thereafter until the death of the insured; provided that, if the insured should die before receiving in annuity payments a sum equal to the face amount of the policy, the Company, upon receipt of due proofs of such death, will pay to the beneficiary in one sum an amount sufficient to make the total of payments equal the said face amount; or

*4. A policy of paid-up life insurance of \$3,190.00; or

*5. A policy of paid-up life insurance of \$2,000.00 and cash \$764.00.

*Options 4 and 5 are available only on receipt of evidence of insurability satisfactory to the Company.

* * * * *

Premiums

The consideration for this contract is the application herefor, which is made a part hereof, the payment on or before the date this policy shall take effect as provided by the application herefor, of Sixty-one and 12/100 Dollars (\$61.12), as the premium for term insurance (for one year from the date of issue hereof and for such reserve as may be required by law, and the further payment of a like amount on each anniversary of the said date of issue

Plaintiffs' Exhibit No. 16—(Continued)

until Twenty full annual premiums in all shall have been duly paid, or until the prior death of the insured. Possession of the policy without payment of such first year's premium shall be considered as possession for inspection only. The designation herein of the amount of the premium and the recital as to the consideration of this policy shall not be construed as an acknowledgment of the payment or receipt of premium. All premiums hereon are payable either at the Home Office of the Company or to an authorized agent, on the delivery of a receipt signed by the President or Secretary of the Company, and countersigned by said agent. If any premium hereon shall not be paid on or before the date when due, the liability of the Company hereunder shall cease, except as expressly provided otherwise herein. Notice of every premium that may become due or payable hereunder is given and accepted by the delivery and acceptance of this policy, and any further notice is expressly waived by the insured.

All of the premiums and values in this policy are based on the assumption that premiums are payable annually as provided above. However, after the policy shall have been in force one year, the insured shall have the privilege, on written request on any anniversary of the date of issue hereof, of paying the premiums hereon semi-annually, quarterly or monthly. Semi-annual premiums shall be fifty-one per centum, quarterly premiums twenty-six per centum and monthly premiums eight and eighty-three hundredths per centum of the annual prem-

Plaintiffs' Exhibit No. 16—(Continued)

ium payable hereunder, provided that no individual premium payment shall be of an amount less than five dollars. In the event of death of the insured all semi-annual, quarterly or monthly premiums necessary to complete payment of premiums to the end of the policy year in which the said death occurs shall be deducted from the amount payable hereunder.

* * * * *

PLAINTIFFS' EXHIBIT No. 17

California-Western States Life Insurance Company
Home Office, Sacramento

Agrees to Pay

Face Amount—The Sum of Three Thousand Dollars to

The Insured—Myron Kern.

Maturity Date—On the 23rd day of June, 1974, if the insured shall be then living; or to

Beneficiary—Ellen L. Kern, Step-mother of the insured, if living, otherwise to Lenore Kern and Wilfred Kern, Sister and Brother, respectively, of the insured, share and share alike, or to the survivor of them, upon receipt at the Home Office of the Company of this policy duly discharged together with due proofs of the death of the insured prior to the maturity date hereof and while this policy is in force.

Change of Beneficiary—The insured has xxx reserved the right to change the beneficiary.

Plaintiffs' Exhibit No. 17—(Continued)

Annual Life Insurance Premium—An Annual Premium of One Hundred and 35/100 Dollars is payable on each 23rd day of June, commencing on the date of issue hereof, until Twenty full annual premiums in all shall have been duly paid, or until the prior death of the insured, subject to the provisions hereof pertaining to the payment of premiums.

This policy is subject to the printed provisions of the following pages hereof which are hereby made a part of this contract.

In witness whereof, California-Western States Life Insurance Company has executed this policy at Sacramento, California, this 23rd day of June, 1941, which is the date of issue of this policy.

[Seal] /s/ O. J. LACY, President

 /s/ B. V. GRISWOLD, Secretary

Countersigned by: Signed A. G. Kane.

Policy No. 428642

Age 27

Endowment at age 60, 20 Premiums.

Non-Participating.

* * * * *

How Premiums Are Payable: The consideration for this contract is the application herefor, which is made a part hereof, the payment on or before the date this policy shall take effect as provided by the application herefor of the annual premium stated on the first page hereof, as the premium for term insurance for one year from the date of issue hereof

Plaintiffs' Exhibit No. 17—(Continued)

and for such reserve as may be required by law, and the further payment of a like amount on each anniversary of the said date of issue for the period stated on the first page hereof. Possession of the policy without payment of such first year's premium shall be considered as possession for inspection only. The designation herein of the amount of the premium and the recital as to the consideration of this policy shall not be construed as an acknowledgment of the payment or receipt of premium. All premiums hereon are payable either at the Home Office of the Company or to an authorized agent, on the delivery of a receipt signed by the President or Secretary of the Company, and countersigned by said agent. If any premium hereon shall not be paid on or before the date when due, the liability of the Company hereunder shall cease, except as expressly provided otherwise herein. Notice of every premium that may become due or payable hereunder is given and accepted by the delivery and acceptance of this policy, and any further notice is expressly waived by the insured. * * * * *

Grace for Payment of Premiums—A grace period of one month, not less than thirty days (without interest) will be allowed in payment of all premiums after the first, during which time the policy shall remain in force. In the event of the death of the insured within said grace period, the unpaid premium will be deducted from the amount payable hereunder.

When Policy Will Lapse—If any premium be not

Plaintiffs' Exhibit No. 17—(Continued)

paid by the end of the grace period, this policy shall lapse.

How Policy May Be Reinstated After Lapse—In event of default in payment of any premium on this policy, the insured shall have the right, at any time within five years after such default, to apply for reinstatement thereof. Application for reinstatement must be made in writing, accompanied by evidence of insurability satisfactory to the Company, together with payment of arrears of premiums and any other indebtedness, with compound interest thereon from date of default at a rate not exceeding six per centum per annum; provided, however, that the policy shall not be considered as reinstated unless and until the application therefor shall have been approved by the Company at its Home Office, such reinstatement to be effective only from and after the day on which the application for reinstatement is approved.

* * * * *

DEFENDANT'S EXHIBIT "A"

November 14, 1946

Mr. Paul E. Plesha

9 EAD

314 26th Street, Sacramento, California

C-R No. 3 309. Policy No. 419 814.

Dear Sir:

The Veterans Administration has been advised that you were separated from active service on October 20, 1945..

Defendant's Exhibit "A"—(Continued)

As you may recall, you have the above numbered life insurance policy under the protection of the Soldiers' and Sailors' Civil Relief Act. This means that all the premiums becoming due and not paid during the period of protection, are charged as a loan against the policy, and on this indebtedness you pay interest, at the policy loan rate of the company.

You may leave this policy under the protection of this Act for a maximum period of two years from the date of your discharge. During this time you may repay any part of your loan, as well as pay any premiums that become due, but at the end of this two year period, protection will cease and an accounting will be made. It is also your privilege to have the policy withdrawn from the protection of the Act now or at some future time within the two year period with the consent of the Veterans Administration.

When the protection provided by the Act terminates, and a final accounting is made, you will owe the Insurance Company the difference between this premium loan and the then cash value of the policy available for this purpose. By law, the United States guarantees this difference to the Insurance Company and any part of it left unpaid will be paid by the United States to whom you will then owe whatever payment the Government made on your account.

Defendant's Exhibit "A"—(Continued)

A copy of this letter is being mailed to the company carrying your insurance and it is suggested that you communicate with it for any necessary information, if it is your desire to terminate the protection prior to the expiration of the two year period.

Very truly yours,

R. D. Peck,

Director, Actuarial Service

Copy to: California-Western States Life Insurance
Company, Sacramento, California.

GES—GE/ehp FL 9-63 May 1946

July 21, 1947

9EAD

Mr. Paul E. Plesha

314 26th Street, Sacramento, California

C-R 3309 Policy No. 419 814.

Dear Sir:

According to the records of the Veterans Administration, your life insurance policy, numbered above, is still under the protection of the Soldiers' and Sailors' Civil Relief Act. This protection will terminate on October 20, 1947, because, under the law, protection may not continue for more than two years after the date of separation from active service. On This Termination Date, The United States

Defendant's Exhibit "B"—(Continued)

Mr. Paul E. Plesha

Aug. 10, 1948

314 26th Street, Sacramento, California

4AAB-X CR-No. 3,309 Policy No. 419 814.

Dear Mr. Plesha:

We have your letter postmarked May 18, 1948 which is in response to Form Letter 4-62 from this Administration dated May 7, 1948 relative to your indebtedness to the United States in the amount of \$261.05 on account of premiums and interest guaranteed under the provisions of the Civil Relief Act in connection with your commercial life insurance policy issued by the California Western States Life Insurance Company.

Your financial condition as set forth in your letter is fully appreciated. Since it is not the intention of this Administration to work a hardship on any veteran in liquidating his indebtedness, monthly installments of \$10.00 to begin with will be acceptable to the Veterans Administration if the payments are proportionately increased when your financial condition improves in order to liquidate the entire indebtedness within the allotted time of approximately one year.

As previously stated, remittances should be made by check, draft or money order drawn payable to the Treasurer of the United States and forwarded to Collections Division, Veterans Administration, Washington 25, D. C. for deposit to the credit of appropriation 36X0135, Soldiers' and Sailors' Civil Relief, VA.

Defendant's Exhibit "A"—(Continued)

Government Will Cease Guaranteeing Further Premiums On Your Policy, And It Will Be Necessary For You To Take Some Action To Maintain Your Insurance In Force.

Any premiums on your policy that became due and were not paid during the period of protection, have been charged as a loan against the policy with interest at the policy loan rate of the insurance company. There are now two courses of action open to you, depending on whether the loan, if any, against your insurance policy on the termination date will be more or less than the cash value. The company carrying your insurance will advise you, upon request, as to the loan status of your policy.

If there is a loan which is greater than the cash value, the insurance company must, in order to invoke the provisions of the Soldiers' and Sailors' Civil Relief Act, terminate your policy on the date shown above, render a Statement of Account, and receive payment of the difference from the United States Government. Any amount paid on your account will be a debt owed by you to the United States. You may not continue your policy in force if the United States has to make a cash settlement with the insurer.

If the cash value of your policy exceeds the loan, or if there is no loan, there will be no settlement to be made by the Government. The payment of premiums and all transactions regarding this policy will be between you and the insurance company.

Defendant's Exhibit "A"—(Continued)

It is suggested that you get in touch with the insurance company as soon as possible and advise them of your wishes in this matter.

Very truly yours,

R. D. Peck, -

Director, Actuarial Service

Copy to: California-Western States Life Ins. Co.,
Sacramento, California.

FL 9-266 Nov. 1946 GE/ct.

Veterans Administration Insurance Form 380 3309

Application for Benefits

Soldiers' and Sailors' Civil Relief Act of 1940

[Stamped]: Received Mar. 17, 1941.

Use an application (and copy) for each insurance policy, or certificate of membership, to be brought under the provisions of the Act. Send this Application to the Insurance Company, Association, or Society. Send Copy of Application to the Veterans Administration, Washington, D. C.

To: Calif-Western States Life Insurance Company, 10th and J Streets, Sacramento, California.

Face Value of insurance: \$2,500. Effective date of insurance: 12-6-40. Policy Number 419814.

I, the insured under the above identified policy issued by the above named insurer, do hereby make

Defendant's Exhibit "A"—(Continued)

application to have said policy protected in accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, and to that end I do hereby consent and agree to such modifications of the terms of the policy as are made necessary by the provisions of the Act; with the understanding that the insurer (Company or Association), by receiving and filing this application, shall be deemed to have assented thereto, to the extent, if any, to which the policy is within the provisions of the Act.

1. Name of insured: Paul E. Plesha.
2. Home address: 314 26th Street, Sacramento, California. Address to which Premium Notices are sent: Same as above.
3. Date of birth: 6-18-20.
4. Place of birth: Sacramento, California.
5. Date of last entrance into active service: March 3, 1941.
6. Identification number: 20,908,010. Branch of Service: Army.
7. Due date of last premium paid on policy: 12-6-40.
8. Name and address of office or person to whom paid: Calif-Western States Life Ins. Co., Sacramento, Calif.
9. Next premium will be due and payable on: 3-6-41.

Defendant's Exhibit "A"—(Continued)

10. For period of: Quarterly.
11. Is there any indebtedness on this policy due ~~the~~ insurer: No.
12. Is the policy pledged or assigned to any person, firm, corporation, etc., other than the insurer, as security for an indebtedness: No.
13. Give the name and address of person (firm, corporation, etc.) who is now in possession of the policy: Tom Plesha.
14. Have you made a similar application to have another policy (or policies) protected by the provision of the Act? No.

In consideration hereof, I hereby consent and agree that the United States shall be protected in the amount of any premiums and interest guaranteed on the above numbered policy in the event of its maturity as a claim, or out of the cash surrender value of the policy, at the expiration of the period of protection under the Act.

Signed at Sacramento, California, this March 5, 1941.

/s/ Paul E. Plesha, Corp. 184th Inf.
Rifle, Co. D.

The undersigned witnessing officer does hereby certify that the insured is on active duty in the military service of the United States. Signed: Charles H. Ferris, Capt., Co. D, 184th Inf.

[Stamped]: Received Mar. 15, 1941.

Defendant's Exhibit "A"—(Continued)

Copy

3309

Veterans Administration Insurance Form 381

Report by Insurer

Soldiers' and Sailors' Civil Relief Act of 1940

[Stamped]: Received Mar. 22, 1941.

A report in duplicate on each policy will be made by the insurer to the Veterans Administration, Insurance Service, Washington, D. C., immediately upon request of an application from the insured.

From: California-Western States Life Insurance Co., Sacramento, California.

To: Veterans Administration, Insurance Service, Washington, D. C.

The insurer hereby reports the receipt of an application from the insured for protection of his policy under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940.

1. Date of insured's application: 3-5-41.

2. Date received by insurer: 3-10-41.

3. Name of insured: Paul E. Plesha.

4. Home address: 314 26th St., Sacramento, Cal.

5. Effective date of insurance: 12-6-40.

6. Policy Number: 419814.

7. Date of birth: 6-18-1920.

8. Place of birth: Sacramento, Calif.

9. Plan of insurance: O.L. (E85) Part.—No E.I.

or P.E.

10. Face Amount of insurance: \$2,500.

11. Age at issue: 20.

Defendant's Exhibit "A"—(Continued)

12. Amount of premium \$57.63 annual, \$14.98 qtly.

13. Due date of last premium paid on policy: 12-6-40.

14. Next premium will be payable on: 3-6-41.

15. For period of: Quarterly.

16. A statement of all past due premiums, if any, with interest calculated to include date of insured's application, is as follows: None.

17. A statement of the cash surrender value, as of the date of insured's application, is as follows: None.

18. A statement of all indebtedness, if any, due the insurer under this policy, with interest calculated to include date of insured's application, is as follows: None.

19. If it appears that the policy has been assigned to a person, firm, or corporation other than the insurer, please give a complete statement of the facts as shown by the records of your office: None.

20. Does the policy (certificate of membership, constitution, or by-laws of the organization) contain any provision regarding service by the insured with the military or naval forces of the United States? No.

21. What information does the insurer have about present whereabouts of policy? None.

The insurer hereby certifies the above to be a correct statement regarding the policy as shown on the records at its principal office or place where such records are maintained.

Defendant's Exhibit "A"—(Continued)

It is understood and agreed that the insurer, by receiving and filing the application made by the insured, shall be deemed to have assented thereto, to the extent, if any, to which the policy is within the provisions of the Act. Further it is understood and agreed that the United States shall have a first lien upon the policy while receiving the benefits of the Act, subject only to any lien existing at the time of insured's application, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of the lien. Before any dividend is paid or any loan or settlement is made while the policy is within the provisions of the Act, the written consent of the Veterans Administration must be obtained.

Signed at Sacramento, California, this 12th day of March, 1941.

California-Western States Life
Insurance Co.,

/s/ By J. A. Mason, Manager

[Stamped]: Received Mar. 21, 1941.

DEFENDANT'S EXHIBIT "B"

Washington 25, D. C.

Notice to Insured to Remit Amount Stated
in Column (4) Below

In Reply Refer to: 4AAB.

C-R- No. 3309. Policy No. 419 814.

Name of Insured: Paul E. Plesha, 314 26th St.,
Sacramento, California.

Name of Insurer: California-Western State Life
Ins. Co., Sacramento, California.

(1) Effective Date of Insurance: December 6,
1940.

(2) Face Value: \$2500.

(3) Termination Date: October 20, 1947.

(4) Amount Awarded Insurer: \$261.05.

1. An award has been approved in settlement of premiums and interest guaranteed under Article IV of the Soldiers' and Sailors' Civil Relief Act, as amended, in connection with the above described life insurance policy. The policy ceased and terminated, as provided by Section 406 of the Act, as amended, on the termination date indicated above.

2. The United States has paid to the insurer the amount awarded, as stated in Column (4) above; this amount represents a debt due the United States by the insured above named and will be collected by direct remittance, by deduction from any amount due said insured by the United States or otherwise as provided by law.

3. Upon receipt of this letter the insured herein

Defendant's Exhibit "B"—(Continued)

named should promptly remit to the Collections Division, Veterans Administration, Washington 25, D. C., the amount stated in Column (4) above. Remittance should be by check or money order drawn in favor of the Treasurer of the United States and should be accompanied by the attached copy of this letter for identification purposes. If remittance is not received within 30 days from date of this letter collection will be otherwise effected by Payees Account Service, as stated in the preceding paragraph.

Date: Feb. 13, 1948.

/s/ A. B. Lenoir

L. J. Johnston,

Director, Payees Account Service

FL 4-62 Jun 1946 (Replaces Form 1402)

[Letterhead of The Connecticut Mutual Life
Insurance Company, Hartford]

Veterans Administration

March 11, 1948

Washington 25, D. C.

Re: 4AAB—CR No. 3309—Policy No. 419-814.

Attention: Mr. L. J. Johnson, Director Payees
Accounts Service.

Dear Mr. Johnson:

This is in response to your letter of February 13, 1948. It so happens that I am not in a position at the present time to make payment, or even a deposit

Defendant's Exhibit "B"—(Continued)

toward the amount due as referred to in your correspondence.

Because of this, would you be kind enough to write me a letter, telling me exactly the amount I owe, and also what mode of payment I may avail myself of in order to take care of this obligation.

Yours very truly,

/s/ Paul E. Plesha

PP/1 enc. OK N P.P.

In reply refer to: 4AAB. Civil Relief No. 3309.

Policy No. 419 814. Insurance Company: California Western States Life Insurance Co.

Mr. Paul E. Plesha

May 7, 1948

314 26th Street, Sacramento, California

Dear Sir:

Reference is made to your letter of March 11, 1948.

In connection with the above described life insurance policy, an award has been approved under the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act, as amended, in favor of the company named and payment of the award in the amount of \$261.05 has been made to the company. The policy, which was protected from possible lapse during the period of your military training pursuant to application made by you, ceased and terminated on October 20, 1947.

Under the provisions of the Soldiers' and Sailors'

Defendant's Exhibit "B"—(Continued)

Civil Relief Act the Government guaranteed to the insurance company all premiums and interest not paid by you during the period of protection in excess of the cash value of the policy at the time of termination. The amount which has been paid to the company now becomes a debt which you owe the Government.

The amount of the indebtedness should be paid in full within the next 30 days. However, if the indebtedness is of such amount that payment in one sum would impose undue hardship upon you due to your financial circumstances, you should communicate with the Payees Accounts Service, Veterans Administration, Washington 25, D. C., stating the circumstances which would cause such hardship, and advising the largest amount which you would be able to pay monthly with a view to liquidating the indebtedness as soon as possible, but in any event within a period of approximately one year. If reply is not received from you within 30 days from the date of this letter, it will be necessary to effect collection either by deduction from any amounts due you from the Government or otherwise, as provided by law.

Remittance should be made by check, draft or money order drawn in favor of the Treasurer of the United States and forwarded to Collections Division, Veterans Administration, Washington 25, D. C. for deposit to the credit of the appropriation Soldiers' and Sailors' Civil Relief, VA 36X0135. Your remittance (or the first installment remittance

Defendant's Exhibit "B"—(Continued)

if payment cannot be made in one sum) should be accompanied by the enclosed copy of this letter for identification purposes.

All communications, including remittances, directed to this Administration regarding this policy and your indebtedness in connection therewith should bear your Civil Relief (CR) number for identification purposes.

Very truly yours,

/s/ A. D. Garter

L. J. Johnston,

Director, Payees Accounts Service

APJ:apj FL 4-62 Mar 1948

[Letter written in longhand]

Dear Sirs:

In reference to the enclosed letter I submit the following information.

I find it impossible at the present time to send more than Ten dollars a month because of other financial obligations.

Would you please advise me if this would be satisfactory and in answering would you please return the copy of the letter I have enclosed from the Veterans administration, as I will need it to forward to the collection Division when I make my first payment.

/s/ Paul E. Plesha

314-26 Street, Sacto, Calif.

1 encl.

Defendant's Exhibit "B"—(Continued)

All communications directed to this Administration regarding this matter, as well as remittances to be applied on the indebtedness, should bear your CR-No. 3 309 for identification purposes. The enclosed copy of this letter should accompany your first remittance.

Very truly yours,

/s/ F. D. Shirley

O. O. Fleming,

Director, Payees Accounts Service

Enc. APJ:apj APJ

[Letter and two attachments written in longhand]

Dear Sirs:

Enclosed is the first quart of blood I owe you.
Check for Ten dollars enclosed.

/s/ Paul E. Plesh,

CR-No. 3 309 Policy No. 419,814

2 attchs S

NAN APJ 10/14/48

304 P. E. Plesha, J. E. Mabbutt, M. L. Kern

Defendant's Exhibit "B"—(Continued)

Folder chg. to Bo#12 10/12/46 ES 11/15/48

CR. No. 3-308 Policy No. 419.814 27719 Paul E.
Plesha, 314-26 Street, Sacramento, Calif.

C6546188 N1927254 No KVTH 11-10-48 WC
SN20-908-010

To: Treasurer of the United States, Collections
Division, Veterans Adm., Washington 25, D.C.
Refund Civil Policy 36X0135.

Enclosed please find check to cover \$10.00; Ten
dollar-monthly payment.

a/c /s/ Paul E. Plesha CR-3309

1 Bk—El

[Stamps Illegible]

Closed NSL 28502

Dec. 28, 1948

Treasurer of the United States
Collections Div. Vet. Adm., Wash. 25, D. C.

Dear Sir:

Enclosed is a check to cover Nov. and Dec. pay-
ments due under the appropriations 36X0135,
Soldiers and Sailors Civil Relief, VA 20.00

Refer my CR-No. is, 3 309

Amount of check \$20.00. Twenty and no/100.

Sincerely

/s/ Paul E. Plesha, 314-26th Street
Sacramento, Calif.

Happy New Year to you all. Even though you guys
are breaking me.

Defendant's Exhibit "B"—(Continued)

Mr. Paul E. Plesha

Feb. 17, 1950

314 26th Street, Sacramento, California

4AAE Civil Relief No. 3 309 Policy No.
419 814 Calif. West. States Life Ins. Co.

Dear Mr. Plesha:

Reference is made to the deduction in the amount of \$221.05 from your National Service Life Insurance dividend to be applied on your indebtedness to the United States established against your commercial life insurance policy mentioned above which received protection under the provisions of Article IV, Soldiers' and Sailors' Civil Relief Act.

The amount of the above deduction has been credited to your account thereby liquidating the above-mentioned indebtedness to the United States.

Very truly yours,

/s/ [Illegible]

O. O. Fleming,

Director, Payees Accounts Service

MD:dlb

DEFENDANT'S EXHIBIT "L"

Memorandum

November 10, 1925

From: Chief, Disbursing Division.

DCA

To: Insurance Division. Attention, Mr. Sasser.

Subject: Soldiers' & Sailors' Civil Relief Claims.

V. B. 1923.

1. In compliance with verbal request the follow-

Defendant's Exhibit "L"—(Continued)

ing statement of amounts received and deposited in the Treasury to the credit of the appropriation Soldiers' and Sailors' Relief Claims, V. B., 1923, is furnished:

Name	Amount	Receipt No.	Date Deposited in Treasury
Brey, Wm. G.	\$22.63	416698	April 9, 1924
Danilson, H. G.	17.16	408734	February 9, 1924
Danilson, H. G.	17.16	413219	March 8, 1924
Danilson, H. G.	17.14	420206	April 9, 1924
Davis, Ancil G.	50.44	398925	January 9, 1924
Dick, Wm. W.	24.11	467176	November 8, 1924
Hannah, Joseph E.	22.60	387790	November 9, 1923
Harker, Glenn F.	49.45	389510	December 10, 1923
MacKechnie, Archibald R.	16.34	394353	December 10, 1923
Miller, Raymond O.	83.50	386531	November 9, 1923
Montgomery, Wm. P.	14.10	386522	November 9, 1923
Montgomery, Wm. P.	20.00	393795	December 10, 1923
Montgomery, Wm. P.	19.15	407596	February 9, 1924
Stewart, Thomas H.	110.64	509108	October 8, 1925

\$484.42

/s/ Wm. H. Holmes

SUMMARY

Amount of Appropriation.....\$25,000.00

Reimbursements 484.42

\$25,484.42

Disbursements\$19,868.07

Turned back to Surplus Fund..... 5,505.71

Treasury Cash 110.64

\$25,484.42

Defendant's Exhibit "L"—(Continued)

United States Veterans Bureau

Memorandum DAD-B December 9, 1925

From: Harold W. Breining, Assistant Director
Finance Service.

To: Chief, Insurance Division.

Subject: Report of Soldiers' & Sailors' Civil Relief
Claims, V.B. 1923.

In reply to your memorandum of December 7, 1925, relative to a final report on the appropriation, "Soldiers' and Sailors' Civil Relief Claims, V.B. 1923", you are advised that this report agrees with the records of Finance Service insofar as the disbursements and refunds are concerned.

Under date of September 26, 1925, Warrant No. 125, was issued which deposited to the Surplus Fund the sum of \$3,505.71 leaving a balance in the Treasury of \$110.64.

There is attached a statement of the appropriation as shown on the records of Finance Service.

/s/ Harold W. Breining

Defendant's Exhibit "L"—(Continued)

Soldiers' & Sailors' Civil Relief Fund

Statement of Account

Claims Paid to Insurance Companies

* * * * *

Reimbursements by Assureds

Brey, William G.	\$22.63	Harker, Glenn F.	\$49.45
Danilson, H. G.	17.16	MacKechnie, Archibald R.	16.34
Danilson, H. G.	17.16	Miller, Raymond O.	83.50
Danilson, H. G.	17.14	Montgomery, William P.	14.10
Davis, Ancil G.	50.44	Montgomery, William P.	20.00
Dick, William W.	24.11	Montgomery, William P.	19.15
Hannah, Joseph E.	22.60	Stewart, Thomas H.	110.64

SUMMARY

Amount of Appropriation.....\$25,000.00

Reimbursements484.42

\$25,484.42

Claims paid to Insurance Companies.....\$19,868.07

Balance on hand for return to Treasury.. 5,616.35

\$25,484.42

United States Veterans Bureau

Memorandum

December 10, 1925

From: Chief, Insurance Division.

To: The Director.

Subject: Final Report of Civil Relief Section.

Section 100 of the Act of Congress approved March 8, 1918, known as the Soldiers' and Sailors' Civil Relief Act, is quoted as follows:

"That for the purpose of enabling the United States the more successfully to prosecute and carry on the war in which it is at present engaged, pro-

Defendant's Exhibit "L"—(Continued)

tection is hereby extended to persons in military service of the United States in order to prevent prejudice or injury to their civil rights during their term of service and to enable them to devote their entire energy to the military needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the continuance of the present war."

Article IV of the Soldiers' and Sailors' Civil Relief Act related to insurance, and the Civil Relief Section of the Bureau of War Risk Insurance was organized to carry out the provisions of that Article. The protection afforded to the soldiers and sailors consisted of a guarantee by the United States Government to the respective insurers for the premiums on such of their policies as were approved for the benefits of the Act, upon application of the insured and when the premiums on such policies were not otherwise paid. The benefits of the Act were extended to persons in the military or naval service of the United States during the period of their military service and for one year thereafter or one year from the declaration of peace, whichever was the earlier date.

The work of the Civil Relief Section determined the eligibility of applicants for the benefits of Article IV of the Act, and to keep an account of the amount due each insured by means of "Monthly Difference Reports." In order to carry out the pro-

Defendant's Exhibit "L"—(Continued)

visions of the Act it was necessary to touch upon nearly every class of work handled in the Home Office of an insurance company, such as the consideration of applications for approval or rejection, conducting correspondence in order to clear up discrepancies, questions of beneficiary, assignment, indebtedness, interest accumulations, premium accounting, record card writing, and filing of every description.

The Civil Relief Section received 10,468 applications, of which 7,745 were approved as to the benefits of the Act. The face value of insurance represented by the approved applications amounted to \$12,526,956.29, on which premiums in the amount of \$362,399.50 were guaranteed by the Government. During the period of protection 102 policies matured as death claims, amounting to \$184,006.

The Joint Resolution of Congress, dated March 3, 1921, provided among other things for the termination of Article IV of the Soldiers' and Sailors' Civil Relief Act. However, Section 411 of said Article directed that the protection afforded assureds in the active service at the termination of the war should be continued for one year after the termination of the war—the other policies having terminated at the expiration of one year from the date of the insured's discharge from the service. If the premiums protected by the Government were not paid by the insured or someone in his behalf the policy was surrendered for its cash value, and if the cash value was insufficient to cover the defaulted

Defendant's Exhibit "L"—(Continued)

premiums and interest, the difference was taken care of by the Government.

An appropriation of \$25,000 was made available by Congress to cover the claims arising under Article IV of the Act. Claims in the amount of \$19,868.07 were paid.

The Soldiers' and Sailors' Civil Relief Bonds in the amount of \$195,500 which were issued by the Government to the different companies as security together with interest in the amount of \$13,935.25 have been returned to the Division of Loans and Currency, Treasury Department, for cancellation.

The itemized statement attached shows the number and amount of claims paid, the number and amount of reimbursements, and a summary of the disposition of the Civil Relief Fund.

/s/ L. C. Jesseph

Forwarded: Signed Charles E. Mulhearn, Assistant Director.

United States Veterans Bureau

Memorandum

December 15, 1925

From: O. W. Clark, Assistant Director, Coordination Service.

To: The Director.

Subject: Final Report of Civil Relief Section.

The attached file relative to the above subject is returned with the recommendation that the Finance Service be instructed to return to the surplus fund

Defendant's Exhibit "L"—(Continued)
of the Treasury the amount of \$110.64 shown on the statement as the balance of Treasury cash available in the Soldiers' and Sailors' Civil Relief Fund.

Contact has been established with the Insurance Division and you are respectfully advised that it has been ascertained that there will be no further disbursements from this appropriation and an exhaustive study of the records indicate that there will be no further reimbursements. The account is, therefore, considered closed.

/s/ O. W. Clark

File attached

DEFENDANT'S EXHIBIT "M"

Report of United States Veterans' Bureau

* * * * *

Civil Relief Act

In order to prevent the lapse during the war of insurance carried by soldiers and sailors with commercial insurance companies, the act of Congress approved March 8, 1918 (Art. IV, Public No. 103, 65th Cong., H.R. 6361) provided that the Government would, on application, guarantee to companies premiums on such insurance while the insured were in the active service during the World War. The civil relief section was organized to handle this work.

In accordance with the joint resolution of March 3, 1921 (H. Res. No. 312), the provisions of Article

Defendant's Exhibit "M"—(Continued)

IV of the act terminated March 3, 1922. Policies then receiving the benefits of the act passed from under the jurisdiction of the bureau on that date.

The work accomplished by the civil relief section in administering this section of the act may be briefly summarized as follows:

Seven thousand seven hundred and forty-five applications for the benefits provided by the act, representing insurance in an amount of \$12,526,956.29, were received and approved. The United States Government guaranteed yearly premiums in an amount of \$362,399.50. One hundred and two policies for an amount of \$184,006 matured as death claims during the period while the Government was guaranteeing payment of premiums.

An audit has been made of the accounts under the policies that lapsed because of the failure of the insured to reimburse the companies in the amount of premiums, together with interest, protected by the Government. An appropriation of \$25,000 was made available by Congress to cover the claims arising under this section of the law. During the past year all these claims in the amount of \$19,868.07 have been paid and the bonds in the amount of \$195,000 have been returned for cancellation. To date the sum of \$349.67 has been recovered as a reimbursement of the appropriation because of the settlement with the insurance companies, making the net amount of all claims \$19,518.40.

* * * * *

[Endorsed]: No. 14,499. United States Court of Appeals for the Ninth Circuit. Paul E. Plesha, James E. Mabbutt and Myron L. Kern, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed: September 1, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14499

PAUL E. PLESHA, JAMES E. MABBUTT, and
MYRON L. KERN, Appellants,

vs.

UNITED STATES OF AMERICA,
Respondents.

STATEMENT OF POINTS ON APPEAL

Appellants Paul E. Plesha, James E. Mabbutt, and Myron L. Kern, hereby state the points on which they intend to rely in their appeal from the judgment of the trial court herein, as follows:

1. That, contrary to the holding of the trial court herein, the Soldiers' and Sailors' Civil Relief

Act of 1940 did not impose on appellants and others who placed policies of private-company life insurance under the protection of Article IV of said Act prior to its amendment in 1942 any liability or obligation to reimburse the United States in any amount for monies paid by the United States in discharge of its obligations relative to such protected policies under said Act.

2. That, contrary to the implied holding of the trial court herein, the 1942 amendments to the Soldiers' and Sailors' Civil Relief Act did not extend the period of protection of policies placed under protection before the enactment of such amendments.

3. That, contrary to the holding of the trial court herein, the measure of the liability, if any, of each appellant and each other person in like position to reimburse the United States for amounts paid by the United States on account of protection of his private-company life insurance was the amount which the United States would have been required to pay to the insurer on account of such protected policy or policies under the Soldiers' and Sailors' Civil Relief Act as enacted in 1940, not the greater amount which the United States actually paid under the provisions of the 1942 amendments to said Act.

4. That if, as impliedly held by the trial court herein, the 1942 amendments to the Soldiers and Sailors' Civil Relief Act had the effect of increasing the burden of any obligation assumed by appellants and others in like position by placing their private-company life insurance under the protection

of said Act (by increasing the period of protection and the rate of interest and by eliminating credits from payments made by or on behalf of other protected policyholders), such amendments deprived appellants and others in like position of their property without due process of law, and took their property for public use without just compensation, all contrary to the Fifth Amendment of the Constitution of the United States.

5. That contrary to the holding of the trial court herein, the United States was not entitled to offset against dividends declared on National Service Life Insurance policies amounts due to it from appellants or others in like position on account of any indebtedness arising from the protection of their private-company life insurance under the Soldiers' and Sailors' Civil Relief Act where such insurance was placed under protection prior to the amendment of such Act in 1942.

Dated: September 7, 1954.

/s/ WHITE, HARBER & SCHEI,
/s/ LAWRENCE A. SCHEI,
Attorneys for Appellants

[Endorsed]: 1 led September 8, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION CONCERNING RECORD

In order to minimize the costs of this litigation it is hereby stipulated and agreed by Appellants and Respondent, through their respective counsel, that Defendant's Exhibits A through O, inclusive, introduced and received in evidence at the trial of this cause, may be considered as part of the record on appeal herein although not designated by either party as part of the record to be printed. It is further stipulated that if Respondent should designate portions of such exhibits to be printed, this stipulation shall apply to the unprinted portions of such exhibits.

Dated September 20, 1954.

/s/ WHITE, HARBER & SCHEI,

/s/ LAWRENCE A. SCHEI,

Attorneys for Appellants

/s/ ROBERT E. WOODWARD,

Assistant U. S. Attorney,

Attorney for Respondent

[Endorsed]: Filed September 21, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD

Appellants, Paul E. Plesha, James E. Mabbitt, and Myron L. Kern, hereby designate as the record,

proceedings and evidence to be printed in accordance with Rule 17 of the Rules of the United States Court of Appeals for the Ninth Circuit, the following:

1. Complaint of Paul E. Plesha.
2. Defendant's Answer to Complaint.
3. Complaints in Intervention of James E. Mabbutt and Myron L. Kern.
4. Defendant's Answer to such Complaints in Intervention.

5. Requests for Admissions numbered 1 through 17(b) and Replies thereto (Exhibits 19 and 19A).

6. Written Interrogatories numbered 1 to 5, inclusive, 7 to 11, inclusive, 15 to 20, inclusive, 24, 26 to 30, inclusive, and 39, and answers thereto. (Interrogatories and Answers are Exhibits 18 and 18A).

7. The following portions of the transcript of the proceedings and evidence at the trial of this action: page 6, line 12, to page 8, line 11; page 12, line 23, to page 19, line 12; page 41, line 12, to page 80, line 14; page 83, line 19, to page 84, line 25; page 85, line 16, to page 116, line 10; page 117, line 12, to page 125, line 24.

8. Exhibits 1 to 13, inclusive, and the following portions of Exhibits 14, 15, 16, and 17:

Exhibit 14 (Plesha's policy No. 419814): All of "Page One" thereof; and those portions of "Page Four" of said Exhibit which follow the headings "How Premiums Are Payable", "Grace for Payment of Premiums", "When Policy Will Lapse", and "How Policy May Be Reinstated After Lapse".

Exhibit 15 (Mabbutt's policy No. 420558): "Page One" thereof, from the top or beginning thereof to the words "such cash payment", such words being the last words under the heading "Guaranteed Options of Settlement at Age 65"; that portion of "Page Three" of said Exhibit which follows the heading "Premiums" beginning with the words "The consideration" and ending with the words "payable hereunder".

Exhibit 16 (Kern's Policy No. 395773): "Page One" thereof, from the top or beginning thereof to the words "such cash payment", such words being the last words under the heading "Guaranteed Options of Settlement at Age 65"; that portion of "Page Three" of said Exhibit which follows the heading "Premiums" beginning with the words "The consideration" and ending with the words "payable hereunder".

Exhibit 17 (Kern's Policy No. 428642): All of "Page One" thereof; and those portions of "Page Four" of said Exhibit which follow the headings "How Premiums Are Payable", "Grace for Payment of Premiums", "When Policy Will Lapse", and "How Policy May Be Reinstated After Lapse".

9. Stipulation of Appellants and Respondent that Defendant's Exhibits A through O, inclusive, may be considered as part of the record on appeal without being printed.

10. Opinion and Order of the Trial Court dated December 23, 1953.

11. Order Admitting Evidence, filed March 25, 1954.

12. Judgment entered March 16, 1954
13. Findings of Fact and Conclusions of Law as modified and filed May 3, 1954.
14. Notice of Appeal, filed June 25, 1954.
15. Designation of Contents of Record on Appeal, filed June 25, 1954.
16. This Designation.

/s/ WHITE, HARBER & SCHEI,
/s/ LAWRENCE A. SCHEI,
Attorneys for Appellants

[Endorsed]: Filed September 21, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

COUNTER-DESIGNATION OF RECORD

Appellee, United States of America, hereby designates the following portions of the record to be printed in accordance with Rule 17 of the Rules of the United States Court of Appeals for the Ninth Circuit:

1. The following portions of the Reporter's Transcript of the Proceedings at Trial:

- (a) Page 2, line 1 through line 13.
- (b) Page 4, line 16 through page 6, line 11.
- (c) Page 8, line 12 through page 11, line 4.
- (d) Page 11, line 19 through line 23.
- (e) Page 12, line 3 through line 22.
- (f) Page 19, line 13 through page 41, line 10.
- (g) Page 80, line 15 through page 81, line 10.

(h) Page 116, line 11 through page 117, line 11.

2. The following Interrogatories and Answers thereto, including the attachments to such Answers (the Interrogatories and Answers are Plaintiffs' Exhibits 18 and 18A):

(a) Interrogatory and Answer No. 6:

(b) Interrogatories and Answers numbered 32 through 38, but omit Veterans Administration Technical Bulletins TB 4-49, 4-55, 4-56, and also omit Memorandum dated January 15, 1948 (these latter documents being attachments to the Answers to Interrogatories Nos. 36(b) and 36(c)).

3. The following portions of other Exhibits:

(a) From Defendant's Exhibit A:

(1) Letter dated November 14, 1946 from R. D. Peck, Director, Actuarial Service, to Paul E. Plesha.

(2) Letter dated July 21, 1947 from R. D. Peck, Director, Actuarial Service to Paul E. Plesha.

(3) Veterans Administration Insurance Form 380, "Application for Benefits, Soldiers' and Sailors' Civil Relief Act of 1940" (signed by Paul E. Plesha).

(4) Veterans Administration Insurance Form 381, "Report by Insurer, Soldiers' and Sailors' Civil Relief Act of 1940" (signed by California-Western State Life Insurance Co.)

(b) From Defendant's Exhibit B:

(1) "Notice to Insured to Remit Amount Stated in Column (4) Below," dated Feb. 13, 1948.

(2) Letter dated March 11, 1948 from Paul E. Plesha to Veterans Administration.

(3) Letter dated May 7, 1948 from A. J. Johnston, Director, Payees Accounts Service, to Paul E. Plesha.

(4) Undated handwritten letter from Paul E. Plesha, beginning "Dear Sirs: In reference to the enclosed letter I submit the following information * * *"

(5) Letter dated August 10, 1948 from O. O. Fleming, Director, Payees Accounts Service, to Paul E. Plesha.

(6) Letter from Paul E. Plesha, beginning "Dear Sirs: Enclosed is the first * * *"

(7) Letter from Paul E. Plesha to Treasurer of the United States, beginning "Enclosed Please find check to cover \$10.00 * * *"

(8) Letter from Paul E. Plesha to Treasurer of the United States beginning "Dear Sir: Enclosed is a check to cover Nov. and Dec. payments * * *"

(9) Letter dated February 17, 1950 from O. O. Fleming, Director, Payees Accounts Service, to Paul E. Plesha.

(c) From Defendant's Exhibit L—Print the following portions only:

(1) Memorandum dated December 15, 1925, from D. W. Clark to "The Director."

(2) Memorandum dated December 10, 1925, from "Chief, Insurance Division" to "The Director."

(3) Pages numbered 6 and 7, beginning "Soldiers' & Sailors' Civil Relief Fund, Statement of Account, Claims Paid to Insurance Companies." But omit everything after these latter words on p. 6 up to the words "Reimbursements by Assureds" on p. 7.

(4) Memorandum dated December 9, 1925, from Harold W. Breining to "Chief, Insurance Division." One page numbered 4.

(5) One page, numbered 5, beginning "Summary."

(6) Memorandum dated November 10, 1925, from "Chief, Disbursing Division" to "Insurance Division, Attention Mr. Sasser."

(d) From Defendant's Exhibit M:

(1) Print line 1, reading "Report of United States Veterans' Bureau."

(2) Omit first full paragraph, beginning "Section 27 of the new act * * *"

(3) Print the heading "Civil Relief Act" and the five paragraphs which follow it.

(4) Omit the heading "Marine and Seaman's Insurance" and the 5 lines which follow it.

4. This Designation,

LLOYD H. BURKE,

United States Attorney,

/s/ By LESTER S. JAYSON,

Attorney, Department of Justice, Washington 25,

D. C., Attorneys for United States, Appellee.

Acknowledgment of Service attached.

[Endorsed]: Filed September 30, 1954. Paul P. O'Brien, Clerk.